

# Just Peace After Conflict

*Jus Post Bellum and the Justice of Peace*

*Edited by*

CARSTEN STAHN  
JENS IVERSON

*Assistant Editor*

RAFAEL BRAGA DA SILVA

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# Robust Peacekeeping Mandates

## An Assessment in Light of *Jus Post Bellum*

Marco Longobardo\*

### I. Introduction

Since the second half of the twentieth century, peacekeeping missions have attained lots of academic attention and have been explored from different legal perspectives.<sup>1</sup> More recently, the United Nations (UN) and other international actors, acting through peacekeeping missions, have been increasingly involved in processes of state-building and post-conflict reconciliation since states, through these organizations, have considered the post-conflict phase not just a concern of the belligerents, but rather, a matter potentially relevant for the international community as a whole.<sup>2</sup>

*Jus post bellum* offers an interesting perspective on peacekeeping operations, since peacekeepers are often deployed in that grey area between the formal termination of an armed conflict and the actual end of violence; regulation of such situations is one of the main challenges of *jus post bellum*.<sup>3</sup> Indeed, from its origins, legal discourse regarding *jus post bellum*

\* Lecturer in International Law at the Westminster Law School. Internet references were last accessed on 6 July 2018 when the chapter was completed.

<sup>1</sup> The academic literature on peacekeeping is particularly vast and it is not possible to provide here an exhaustive list. For an overall assessment of peacekeeping, see, among many others, Derek W. Bowett, *United Nations Forces: A Legal Study of United Nations Practice* (Stevens and Sons 1964); Nigel D. White, *Keeping the Peace* (2nd edn, Manchester University Press 1997) 207–84; Laura Pineschi, *Le operazioni delle Nazioni Unite per il mantenimento della pace* (Cedam 1998); Giovanni Cellammare, *Le operazioni di peace-keeping multifunzionali* (Giappichelli 1999); Pietro Gargiulo, *Le Peace Keeping Operations delle Nazioni Unite* (Editoriale Scientifica 2000); Ray Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice* (Cambridge University Press 2007); Hitoshi Nasu, *International Law on Peacekeeping: A Study of Article 40 of the UN Charter* (Martinus Nijhoff 2010); Michael Bothe, 'Peace-keeping' in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus (eds), *The Charter of the United Nations: A Commentary* (Oxford University Press 2012) 1171; Micaela Frulli, *Le operazioni di peacekeeping delle Nazioni Unite: continuità di un modello normativo* (Editoriale Scientifica 2012); Joachim A. Koops, Thierry Tardy, Norrie MacQueen, and Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (Oxford University Press 2015); Michael Bothe, 'Peacekeeping Forces' in Max Planck Encyclopedia Public International Law online (August 2016) in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (online edn).

<sup>2</sup> The literature on the role of the UN in post-conflict situations is becoming quite vast. For the main issues, see Massimo Starita, *Processi di riconciliazione nazionale e diritto internazionale* (Editoriale Scientifica 2003); Simon Chesterman, *You, The People: The United Nations, Transitional Administrations, and State-Building* (Oxford University Press 2004); Ivan Ingravallo, *Il Consiglio di sicurezza e l'amministrazione diretta dei territori* (Editoriale Scientifica 2008); Carsten Stahn, *The Law and Practice of International Territorial Administration* (Cambridge University Press 2008); Ralph Wilde, *International Territorial Administration* (Oxford University Press 2008). For an analysis of the international community's interest in the post-conflict phase in light of *jus post bellum* and the doctrine of the responsibility to protect, see Peter Hilpold, 'Jus Post Bellum and the Responsibility to Rebuild: Identifying the Contours of an Ever More Important Aspect of R2P' (2015) 6 *Journal of International Humanitarian Legal Studies* 284.

<sup>3</sup> For an account of the temporal dimension of *jus post bellum*, see Jann K. Kleffner, 'Towards a Functional Conceptualization of the Temporal Scope of *Jus Post Bellum*', in Carsten Stahn, Jennifer S. Easterday, and Jens Iverson (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Cambridge University Press 2014) 287;

has paid great attention to peacekeeping operations conducted by the UN and other international actors.<sup>4</sup> This chapter contributes to this discussion by exploring the impact of so-called robust peacekeeping mandates on the achievement of just peace in the aftermath of an armed conflict from the perspective of *jus post bellum*. The expression ‘robust mandates’ refers to those peacekeeping missions in which peacekeepers are authorized to employ armed force beyond the traditional exception of self-defence.<sup>5</sup> Since the peacekeepers’ increasing involvement in actual military operations, it is necessary to analyse the interplay between *jus ad bellum*, *jus in bello*, *jus post bellum*, and peacetime international law in order to clarify the legal framework applicable to robust mandates. This chapter focuses in particular on the cases of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), the most robust peace mission so far, of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and of the United Nations Mission in South Sudan (UNMISS). The mandates of these three missions present some peculiarities that make the use of armed force extremely proactive and clearly offensive in nature, so that the degree of force employed appears greater than in less recent robust mandates.

In order to study the relationship between these robust peacekeeping mandates and just peace from the perspective of *jus post bellum*, it is necessary to analyse briefly the evolution faced by peacekeeping operations, and to explore how far the UN Security Council (SC) has gone with these three ‘super-robust’ mandates in the Democratic Republic of Congo (DRC), Mali, and South Sudan. This chapter then assesses the evolution of peacekeeping operations against the principles of *jus post bellum* in order to verify whether these robust mandates have been successful in contributing to the attainment of a durable and just peace. Actually, these operations require a close scrutiny since the SC seems to favour these kind of mandates, which likely could be employed in other in other post-conflict scenarios.

## II. The Challenges of Robust Peacekeeping Mandates

### A. The Evolution of Peacekeeping Operations

When the first peacekeeping operation, the United Nations Emergency Force (UNEF), was deployed in 1956 in the aftermath of the Suez Crisis,<sup>6</sup> its features were quite clear: peacekeepers could use armed force only in personal self-defence, the mission should have been conducted impartially with regard to the parties of the armed conflict in the context of

Rogier Bartels, ‘From Jus in Bello to Jus Post Bellum: When do Non-International Armed Conflicts End?’, in Carsten Stahn, Jennifer S. Easterday, and Jens Iverson (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Cambridge University Press 2014) 297.

<sup>4</sup> See e.g. Ivar Scheers, ‘Peacekeeping & *Jus Post Bellum*: Towards A Concept of Rules in Post-Conflict Situations’ (2011) 3 *Central European Journal of International and Security Studies* 75; Frederik Naert, ‘International Humanitarian Law and Human Rights Law in Peace Operations as Parts of a Variable *jus post bellum*’ (2011) 44 *Revue Belge de Droit International* 26; Sylvia Maus, ‘*Jus Post Bellum* à la United Nations? Human Rights, UN Peace Operations, and the Creation of International Law’ (2014) 32 *Wisconsin Journal of International Law* 675.

<sup>5</sup> Some units deployed in the context of robust peacekeeping operations also perform tasks that are unrelated to the use of force. However, this chapter analyses only the issue of the use of force and its link with *jus post bellum* principles.

<sup>6</sup> UNEF was established by UNGA Res. 1001 (ES-I) (7 November 1956) UN Doc. A/RES/1001.



which the mission was dispatched, and the consent of the belligerents was at the basis of the deployment of the UN troops.<sup>7</sup> Since then, the limitation on use of armed force to situation of self-defence, the consent of the belligerents, and the neutrality/impartiality of the mission have been considered the so-called principles of peacekeeping, which have guided the creation of future peacekeeping missions. These principles were particularly suitable for peacekeeping operations tasked with the monitoring of ceasefires, the support for post-conflict reconciliation in the aftermath of international armed conflicts, and the implementation of peace treaties. The model built on the three principles of peacekeeping proved equally successful even when peacekeeping became 'multidimensional', that is, when the UN missions were requested to perform a number of military, police, and civil tasks in order to improve the security of civilians involved in armed conflicts and the building of a safety institutional environment in post-conflict situations.<sup>8</sup>

However, some scenarios immediately demonstrated that the traditional peacekeeping principles could have impaired the mission's success. In particular, when missions have been deployed in territories torn by non-international armed conflicts, the protection of civilians from attacks conducted mainly by armed groups required a more proactive attitude. In particular, in these scenarios, the peacekeepers were presented with the necessity to employ armed force beyond individual self-defence. Indeed, since the UN troops were mainly deployed thanks to the consent of the government against which these groups were fighting, the peacekeepers were often perceived as obstacles to the attainment of the armed groups' goals. For instance, already in the 1960s, the UN mission deployed in Congo to assist the withdrawal of Belgian troops and the consolidation of the Congolese government's authority (the United Nations Operation in the Congo, ONUC) had to use armed force in order to preserve its own freedom of movement, which was limited by some armed groups that threatened the safety of civilians in that region.<sup>9</sup> Again, in 1993, after the failure of two previous missions, the SC conferred enforcing powers on the mission United Nations Operation in Somalia II (UNOSOM II), which had to establish a secure humanitarian environment in Somalia, which was at that time a state torn by violence among local factions which seriously threatened the security of civilians.<sup>10</sup>

It is clear that the principles of peacekeeping were applied very differently from the traditional model in these last mentioned situations. This flexibility in the execution of the missions was possible because peacekeeping operations are not constrained by rules explicitly embodied in the UN Charter, but, rather, they have evolved in the practice of the UN in order to provide effective responses to situations inherently different, on a case-by-case approach.<sup>11</sup> This is the key to the success of many peacekeeping operations: they are extremely

<sup>7</sup> See Summary Study of the Experience Derived from the Establishment and Operation of the Force: Report of the Secretary-General, A/3943, 9 October 1958, para. 179.

<sup>8</sup> See generally, UN Department of Peacekeeping Operations, Handbook on United Nations Multidimensional Peacekeeping Operations (December 2003).

<sup>9</sup> ONUC was established by UNSC Res. 143 (1960) UN Doc. S/RES/143 14 July 1960. The degree of force employed by the mission is the subject of a critical exchange of letters between the government of Belgium and the UN Secretary-General (S/5078, 16 February 1962). For more on this, see Georges Abi-Saab, *The United Nations Operation in the Congo 1960–1964* (Oxford University Press 1978) 174–6.

<sup>10</sup> See UNSC Res. 814 (1993) UN Doc. S/RES/814 (26 March 1993); UNSC Res. 837 (1993) UN Doc. S/RES/737 (6 June 1993). For an evaluation of the peacekeeping experience in Somalia, see Ray Murphy, *UN Peacekeeping in Lebanon* (n 1) 48–63, 93–5.

<sup>11</sup> There is no unanimity among scholars regarding the legal UN Charter basis—if any—of peacekeeping operations. On this issue, which is beyond the scope of this chapter, see generally, Alexandre Orakhelashvili, 'The Legal Basis of the United Nations Peace-Keeping Operations' (2003) 43 *Virginia Journal of International Law* 485;

flexible, and each mandate can be shaped around the needs of a specific conflict/post-conflict environment, based on the goals that the international community wants to pursue in each scenario through the UN.<sup>12</sup>

However, the flexibility of peacekeeping missions has been stretched in the most recent scenarios in which UN mandates have been tasked with active combat operations. In these cases, the original UNEF model built upon the classical principle of peacekeeping is put under significant strain.

## B. Robust Mandates and the Principles of Peacekeeping

The evolution of peacekeeping operations, as well as the flexibility of their mandates, has been acknowledged by a number of strategies and reforms envisaged by the UN Secretary-General in several reports and documents published under their auspices.<sup>13</sup> Contrary to the efforts of many scholars to categorize different kinds of peacekeeping operations,<sup>14</sup> it is more practical to acknowledge the fact that the mandates are different because they are fact-specific. However, peacekeeping operations are such flexible instruments that it is possible to consider traditional, multidimensional, and robust mandates under the same legal regime.<sup>15</sup> Indeed, peacekeeping can be considered an 'operational model', which can concretely perform different functions depending on the will of the SC and the needs of the concerned states.<sup>16</sup>

The evolution of peacekeeping witnessed a significant acceleration in the 1990s. After the experience of UNOSOM II and the failure of peacekeepers to protect civilians during both the Rwandan genocide<sup>17</sup> and the Bosnian armed conflict,<sup>18</sup> an important debate on

Alfonso J. Iglesias Velasco, 'El marco jurídico de las operaciones de mantenimiento de la paz de Naciones Unidas' (2005) 1 *Foro, Nueva época* 127.

<sup>12</sup> See *Prosecutor v. Abu Garda* (Decision on the Confirmation of Charges) ICC-02/05-02/09-PT (8 February 2010) para. 70.

<sup>13</sup> See, among others, UNGA An Agenda for Peace: Preventive diplomacy, Peacemaking and Peace-Keeping, (17 June 1992) UN Doc. A/47/277-S/24111; UNGA Supplement to an Agenda for Peace (25 January 1995) UN Doc. A/50/60-S/1995/1; UNGA Report of the Panel on United Nations Peace Operations (21 August 2001) UN Doc. A/55/305-S/2000/809 (hereinafter: 'Brahimi Report'); UN Department of Peacekeeping Operations, *United Nations Peacekeeping Operations Principles and Guidelines* (2008) (hereinafter: Capstone doctrine); UNGA A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges and Change (2 December 2004) UN Doc. A/59/565; UN Department of Peacekeeping Operations and Department of Field Support, *New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* (July 2009); UNGA Report of the High-Level Independent Panel on Peace Operations on Uniting our Strengths for Peace: Politics, Partnership and People (17 June 2015) UN Doc. A/70/95-S/2015/446.

<sup>14</sup> For an overview on these classifications, see Benedetto Conforti and Carlo Focarelli, *The Law and Practice of the United Nations* (Brill 2016) 289–90.

<sup>15</sup> On the continuity of peacekeeping operations through their evolution, see generally, Frulli (n 1).

<sup>16</sup> See Paolo Picone, 'Il peace-keeping nel mondo attuale: tra militarizzazione e amministrazione fiduciaria' (1996) 79 *Rivista di diritto internazionale* 5; 32, n. 87.

<sup>17</sup> In Rwanda, the United Nations Assistance Mission for Rwanda (UNAMIR), established with UNSC Res. 873 (1993) UN Doc. S/RES/873, was deployed when the genocide took place. On its failure to prevent the genocide, see Fred Grünfeld and Anke Huijboom, *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders* (Nijhoff 2007).

<sup>18</sup> The failure of the United Nations Protection Force to prevent the genocide has been at the centre of national and international proceedings. For more on this, see André Nollkaemper, 'Dual Attribution Liability of the Netherlands for Conduct of Dutchbat in Srebrenica' (2011) 9 *Journal of International Criminal Justice* 1143; Maria Irene Papa, 'The Mothers of Srebrenica Case before the European Court of Human Rights: United Nations Immunity versus Right of Access to a Court' (2016) 14 *Journal of International Criminal Justice* 893.

the powers of peacekeeping missions began at the UN. The outcome of this debate, which involved UN organs, states, and NGOs, was the acknowledgement of the need for more proactive mandates, wherein peacekeepers were authorized to use force beyond self-defence.<sup>19</sup> The expressions ‘robust peacekeeping missions’ and ‘robust mandates’ became commonplace in the language of international relations as well as in academic literature.<sup>20</sup> However, this evolution entailed the reshaping—but not abjuration—of the traditional principles of peacekeeping.<sup>21</sup>

With regard to the issue of the use of armed force, peacekeepers are commonly authorized to use armed force in self-defence and in defence of the mandate.<sup>22</sup> This expression means that peacekeepers may use force not only as a response against direct violence,<sup>23</sup> but also to protect civilians. Furthermore, in most recent mandates, the SC authorized the use of *any means or measures necessary* to fulfil the mandate.<sup>24</sup> It is clear that this expression resonates the practice of authorizing enforcement missions under Chapter VII of the UN Charter, where ‘any necessary means’ and ‘any necessary measure’ are euphemisms that encompass armed force, as in the cases of Kuwait and Libya.<sup>25</sup> The link between these new peacekeeping operations and enforcement missions is confirmed by the fact that robust mandates are adopted under Chapter VII of the UN Charter, although these mandates

<sup>19</sup> According to the Brahimi Report (n 13), peacekeepers ‘must be capable of defending themselves, other mission components and the mission’s mandate. Rules of engagement should be sufficiently robust and not force United Nations contingents to cede the initiative to their attackers.’

<sup>20</sup> For more on this topic, see e.g. Winrich Kühne, ‘The United Nations, Fragmenting States, and the Need for Enlarged Peacekeeping’, in Christian Tomuschat (ed.), *The United Nations at Age Fifty. A Legal Perspective* (Nijhoff 1995) 91; James Sloan, *The Militarisation of Peacekeeping in the Twenty-First Century* (Hart 2001); Trevor Findlay, *The Use of Force in UN Peace Operations* (Oxford University Press 2002); Ralph Zacklin, ‘The Use of Force in Peacekeeping Operations’, in Niels Blokker and Nico Schrijver (eds), *The Security Council and the Use of Force: Theory and Reality—A Need for Change* (Martinus Nijhoff 2006) 91; Laura Pineschi, ‘L’emploi de la force dans les opérations de maintien de la paix des Nations Unies “robustes”: conditions et limites juridiques’, in Maurizio Arcari and Louis Balmond (eds), *La sécurité collective entre légalité et défis à la légalité* (Giuffrè 2008) 139; Nigel D. White, ‘Peacekeeping or War-fighting?’ in Nigel D. White and Christian Henderson (eds), *Research Handbook on International Conflict and Security Law* (Edward Elgar 2013) 572; Ophélie Thielen, *Le recours à la force dans les opérations de maintien de la paix contemporaines* (LDGJ 2013); Mona Ali Khalil, ‘Legal Aspects of the Use of Force by United Nations Peacekeepers for the Protection of Civilians’, in Haidi Willmot, Ralph Mamiya, Scott Sheeran, and Marc Weller (eds), *Protection of Civilians* (Oxford University Press 2016) 205.

<sup>21</sup> For a modern account of the actual role of the traditional principles of peacekeeping in recent practice, see Nicholas Tsagourias, ‘Consent, Neutrality/Impartiality and the Use of Force in Peacekeeping: Their Constitutional Dimension’ (2006) 11 *Journal of Conflict and Security Law* 465, according to which: ‘consent, neutrality/impartiality and the use of force in self-defence oscillate between legal fiction and legal reality. Even as a fiction, they are important ontological myths’, 482.

<sup>22</sup> See Brahimi Report (n 13) para. 49.

<sup>23</sup> In this context, self-defence refers to the right of every individual to respond to an attack through the use of force (for more on this in international law, see Jan Arno Hessbruegge, *Human Rights and Personal Self-Defense in International Law* (Oxford University Press 2017)). A totally different question is whether a state whose troops are employed in a peacekeeping mission can react in self-defence under Article 51 of the UN Charter if those troops are victims of an armed attack (for an overview of this issue, beyond the purview of the present essay, see Paolo Palchetti, ‘Armed Attack against the Military Force of an International Organization and Use of Force in Self-Defence by a Troop-Contributing State: A Tentative Legal Assessment of an Unlikely Scenario’ (2010) 7 *International Organizations Law Review* 241).

<sup>24</sup> See e.g. UNSC Res. 1975 (30 March 2011) UN Doc. S/RES/1975, para. 6; UNSC Res. 2100 (2013) UN Doc. S/RES/2100, para. 17; UNSC Res. 2155 (2014) UN Doc. S/RES/2155, para. 4; UNSC Res. 2295 (2016) UN Doc. S/RES/2295, para. 17; UNSC Res. 2304 (2016) UN Doc. S/RES/2304, paras 5 and 10.

<sup>25</sup> See UNSC Res. 678 (1990) UN Doc. S/RES/678 para. 2; UN SC Res. 1973 (2011) UN Doc. S/RES/1973 para. 4. For more on the meaning of this expression, see Julian M. Lehmann, ‘All Necessary Means to Protect Civilians: What the Intervention in Libya Says About the Relationship Between the *Jus in Bello* and the *Jus ad Bellum*’ (2012) 17 *Journal of Conflict & Security Law* 117; Nabil Hajjami, ‘Que signifie l’expression “prendre toutes les mesures nécessaires” dans la pratique du Conseil de Sécurité des Nations Unies?’ (2013) 47 *Revue Belge de Droit International* 232.

are based on the principles of peacekeeping as well.<sup>26</sup> However, ‘peacekeeping operations should only use force as a measure of last resort, when other means have failed.’<sup>27</sup>

With regard to the issue of consent to the deployment of the mission, the SC has sought the consent of the internationally recognized government of the territory in which the robust mission was to be dispatched, and this consent is the main legal basis that makes the deployment of peacekeepers lawful. Conversely, the SC has maintained a different approach regarding the consent of non-state actors involved in the non-international armed conflict addressed by the mission: on the one hand, the SC has considered it appropriate—but not legally mandatory—to request the consent of some non-state actors involved in the armed conflict;<sup>28</sup> on the other hand, the SC has decided not to seek the consent of other non-state actors considered to be insurmountable obstacles to the reconciliation process, who are usually labelled as ‘local spoilers’<sup>29</sup> and are often targeted by UN sanctions due to alleged terrorist activities.<sup>30</sup> This differential approach regarding the consent of the belligerents involved in a non-international armed conflict may be justified under practical reasons: since robust mandates are deployed in order to support the central government in the reconciliation process, and peacekeepers very likely are to fight against local spoilers, it would be unrealistic that the SC would seek and obtain the consent of those same armed groups that the mission is supposed to fight.

The evolution faced by the rules on the use of armed force and consent has had a significant impact on the impartial/neutral character of the mission, the third principle of peacekeeping. Peacekeepers are no longer considered prevented from taking sides in the conflict in every circumstance. Rather, recently, the impartiality/neutrality of robust missions has been considered as ‘adherence to the principles of the UN Charter,’<sup>31</sup> which has been interpreted as dictating that the peacekeepers ‘should not condone actions by the parties that violate the undertakings of the peace process or international norms and principles.’<sup>32</sup> However, the reference to the adherence to the principles of the UN Charter is problematic since its actual meaning is rather obscure: the only possible interpretation is that mandates adopted following the UN rules and goals are per se neutral/impartial; however, this interpretation results in confusion between the *legality* of the mandates in their entirety and their impartiality/neutrality, which is only one of the principles of peacekeeping. Moreover, since there are no means available to non-state belligerents of challenging the UN mandate

<sup>26</sup> On the interplay between the consent of the host state and the invocation of Ch. VII, see Pineschi, ‘L’emploi’ (n 20) 175–6.

<sup>27</sup> *Prosecutor v. Sesay, Kallon and Gbao* (Trial Judgement) SCSL-04-15-T (2 March 2009) para. 228.

<sup>28</sup> *Ibid.* para. 226: ‘[i]n non-international conflicts, this consent is obtained from the warring parties, not out of legal obligation, but rather to ensure the effectiveness of the peacekeeping operation.’

<sup>29</sup> According to the Capstone doctrine (n 13) 32:

The fact that the main parties have given their consent to the deployment of a United Nations peacekeeping operation does not necessarily imply or guarantee that there will also be consent at the local level, particularly if the main parties are internally divided or have weak command and control systems.

Universality of consent becomes even less probable in volatile settings, characterized by the presence of armed groups not under the control of any of the parties, or by the presence of other spoilers.

<sup>30</sup> See Giorgio Gaja, ‘Use of Force Made or Authorized by the United Nations’, in Christian Tomuschat (ed.), *The United Nations at Age Fifty. A Legal Perspective* (Nijhoff 1995) 39, 51; Iglesias Velasco (n 11) 144–5; Jorge Cardona Llorens, ‘Universalismo y regionalismo en el mantenimiento de la paz a inicios del siglo XXI’, in Organization of the American States, *Universalismo y Regionalismo a Inicios del Siglo XXI* (Organization of the American States 2010) 47, 98; Ian Johnstone, ‘Managing Consent in Contemporary Peacekeeping Operations’ (2011) 18 *International Peacekeeping* 168, 171–2; Frulli (n 1) 72–9.

<sup>31</sup> See Brahimi Report (n 13) para. 50.

<sup>32</sup> *Prosecutor v. Sesay, Kallon and Gbao* (n 27) para. 227.

on the basis of its lack of adherence to the principles of the Charter, constructing impartiality / neutrality as adherence to the principles of the Charter is ultimately an exercise of faith in the respect for UN procedures and goals by the SC.<sup>33</sup> Accordingly, a more practical approach should be preferred. For instance, it has been argued that the impartiality/neutrality of the mission should no longer be considered to be a requirement for the *legality* of the mission—rather, the UN should pursue the *political* goal of dispatching missions that are perceived as impartial by all the relevant stakeholders.<sup>34</sup> In the case of robust mandates, the missions simply do *not* have an impartial/neutral nature as clearly demonstrated by the active role they play in the fight against non-state actors.<sup>35</sup>

The progressive involvement of peacekeepers in actual fighting had an impact also on the rules of international law that the UN troops are required to apply. For instance, in 1999 the UN Secretary-General adopted the bulletin ‘Observance by United Nations forces of international humanitarian law’,<sup>36</sup> which prescribes the observance of the law of war by UN units involved in hostilities, even if dispatched in the framework of a peacekeeping mission.<sup>37</sup> Following the suggestions already offered by some commentators regarding the applicability of international humanitarian law to UN forces,<sup>38</sup> the bulletin acknowledges that peacekeepers may be involved in actual hostilities, notwithstanding the nature of their mandates, and thus they are required to apply international humanitarian law.

A similar acknowledgement of the possibility of the peacekeepers’ involvement in armed conflict is also embodied in the Convention on the Safety of United Nations and Associated Personnel, according to which peacekeepers who are involved in actual hostilities are not protected by attacks under the Convention itself.<sup>39</sup> Interestingly, the Statute of the International Criminal Court criminalizes direct attacks against peacekeepers only ‘as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict’.<sup>40</sup> Whether robust mandates have changed the civilian nature of peacekeepers is an issue that must be analysed case-by-case,<sup>41</sup> but it is noteworthy

<sup>33</sup> For some critical remarks on the Brahimi Report’s idea of impartiality in peacekeeping operations, see Hikaru Yamashita, ‘“Impartial” Use of Force in United Nations Peacekeeping’ (2008) 15 *International Peacekeeping* 615.

<sup>34</sup> Frulli (n 1) 62.

<sup>35</sup> See section II.3 for references to state practice.

<sup>36</sup> UNGA Secretary-General’s Bulletin (6 August 1999) UN Doc. ST/SGB/1999/13. On the bulletin, see Luigi Condorelli, ‘Le azioni dell’ONU e l’applicazione del diritto internazionale umanitario: il bollettino del Segretario generale del 6 agosto 1999’ (1999) 92 *Rivista di diritto internazionale* 1049; Paolo Benvenuti, ‘Le respect du droit international humanitaire par les forces des Nations Unies: la circulaire du Secrétaire Général’ (2001) 105 *Revue Générale de Droit International Public* 355.

<sup>37</sup> ST/SGB/1999/13 (n 36) section 1.1. See also Ray Murphy, ‘United Nations Military Operations and International Humanitarian Law: What Rules Apply to Peacekeepers?’ (2003) 14 *Criminal Law Forum* 153; Rober Kolb, *Droit humanitaire et opérations de paix internationales: les modalités d’application du droit international humanitaire dans les opérations de maintien ou de rétablissement de la paix auxquelles concourt une organisation internationale* (Helbing & Lichtenhahn 2006); Tristan Ferraro, ‘The Applicability and Application of International Humanitarian Law to Multinational Forces’ (2013) 95 *International Review of the Red Cross* 561.

<sup>38</sup> For the debate prior to the bulletin, see Luigi Condorelli, ‘Le Statut des forces de l’ONU et le droit international humanitaire’ (1995) 78 *Rivista di diritto internazionale* 903; Claude Emanuelli, *Les action militaires de l’ONU et le droit international humanitaire* (Wilson et Lafleur Ité 1995).

<sup>39</sup> See Art. 2(2), Convention on the Safety of United Nations and Associated Personnel, 2051 UNTS 363: ‘This Convention shall not apply to a UN operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.’

<sup>40</sup> See Art. 8(2)(b)(iii) and Art. 8(2)(e)(iii), Rome Statute of the International Criminal Court, 2187 UNTS 90.

<sup>41</sup> See *Prosecutor v. Abu Garda* (n 12) para. 83. On this topic, see generally, Barbara Sonczyk ‘The Protection of the Intervention Brigade under Article 8 (2)(e)(iii) of the Rome Statute of the International Criminal Court’ (2015) Zoom-In 13 *Questions of International Law* 25; Andrea Spagnolo, ‘The Crime of Attacking Peacekeepers’,

that international criminal tribunals have recognized that robust mandates have blurred the distinction between peacekeeping and peace enforcement with relevant impact on the protection of these missions.<sup>42</sup>

These adjustments in the application of the traditional principles of peacekeeping and the need to provide a wider legal framework regarding robust mandates demonstrate that states consider peacekeeping such a flexible instrument that robust mandates may be still included in the definition of peacekeeping, even if the classical rules on peacekeeping must be adapted to these new scenarios. However, even taking into account this evolution, some very recent mandates challenge the applicability of the principles of peacekeeping due to their extreme robustness.

### C. The Use of Armed Force in the Practice of Some Recent Very Robust Mandates

#### C.i. *The Use of Armed Force by MONUSCO*

Since the history of UN peacekeeping in DRC is extremely complex, for the purposes of this chapter, only the last two-decade experience will be summarized, with specific regard to the issue of the armed force employed by peacekeepers.<sup>43</sup>

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by SC Resolution 1279 (1999).<sup>44</sup> Despite the fact that, at the beginning, its mandate was not characterized by the use of force beyond self-defence,<sup>45</sup> in 2000, the SC authorized the mission to ‘take the necessary action ... to protect United Nations and co-located JMC personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence’.<sup>46</sup> In 2003, the SC further authorized MONUC to take all necessary measures to fulfil its mandate,<sup>47</sup> while in 2008, the SC stressed that MONUC was authorized to use all necessary means,<sup>48</sup> inter alia to ‘[d]eter any attempt at the use of force to threaten the Goma and Nairobi processes from any armed group, foreign or Congolese ... undertaking all necessary operations to prevent attacks on civilians and disrupt the military

in Fausto Pocar, Marco Pedrazzi, and Micaela Frulli (eds), *War Crimes and the Conduct of Hostilities: Challenges to Adjudication and Investigation* (Edward Elgar 2013) 153.

<sup>42</sup> See *Prosecutor v. Sesay, Kallon and Gbao* (n 27) para. 223.

<sup>43</sup> For more details on recent UN peacekeeping efforts in DRC, see Ray Murphy, ‘UN Peacekeeping in the Democratic Republic of the Congo and the Protection of Civilians’ (2016) 21 *Journal of Conflict and Security Law* 209.

<sup>44</sup> UNSC Res. 1279 (1999) UN Doc. S/RES/1279.

<sup>45</sup> *Ibid.* para. 5.

<sup>46</sup> UNSC Res. 1291 (2000) UN Doc. S/RES/1291 para. 8.

<sup>47</sup> UNSC Res. 1493 (2003), UN Doc. S/RES/1493 paras 25–6:

[The SC] [a]uthorizes MONUC to take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities: — to protect United Nations personnel, facilities, installations and equipment; — to ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or DDRRR; — to protect civilians and humanitarian workers under imminent threat of physical violence; — and to contribute to the improvement of the security conditions in which humanitarian assistance is provided; [The SC] [a]uthorizes MONUC to use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu.

<sup>48</sup> UNSC Res. 1856 (2008) UN Doc. S/RES/1856 para. 5.

capability of illegal armed groups.<sup>49</sup> Accordingly, it is clear that, when MONUC was re-named MONUSCO in 2010,<sup>50</sup> its mandate was already significantly robust.<sup>51</sup>

Since MONUSCO proved unable to guarantee the protection of civilians in the eastern regions of DRC, in 2013, at the proposal of the Secretary-General,<sup>52</sup> the SC deployed an Intervention Brigade, with offensive combat functions. According to Resolution 2098 (2013), the Intervention Brigade consisted

inter alia of three infantry battalions, one artillery and one Special force and Reconnaissance company with headquarters in Goma, under direct command of the MONUSCO Force Commander, with the responsibility of neutralizing armed groups as set out in paragraph 12 (b) below and the objective of contributing to reducing the threat posed by armed groups to state authority and civilian security in eastern DRC and to make space for stabilization activities.<sup>53</sup>

The SC described the Intervention Brigade's mandate as follows:

(b) Neutralizing armed groups through the Intervention Brigade: In support of the authorities of the DRC ... carry out targeted offensive operations ... either unilaterally or jointly with the FARDC [the DRC army], in a robust, highly mobile and versatile manner and in strict compliance with international law, including international humanitarian law and with the human rights due diligence policy on UN-support to non-UN forces (HRDDP), to prevent the expansion of all armed groups, neutralize these groups, and to disarm them in order to contribute to the objective of reducing the threat posed by armed groups on state authority and civilian security in eastern DRC and to make space for stabilization activities.<sup>54</sup>

The creation of the Intervention Brigade was intended 'on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping.'<sup>55</sup> However, the SC confirmed the Intervention Brigade in 2014,<sup>56</sup> 2015,<sup>57</sup> 2016,<sup>58</sup> 2017,<sup>59</sup> and 2018.<sup>60</sup> Despite the SC's warning that the Intervention Brigade should have had a prompt exit strategy in order to pass its responsibilities to the DRC government,<sup>61</sup> the Secretary-General

<sup>49</sup> *Ibid.* para. 3(d).

<sup>50</sup> UNSC Res. 1925 (2010) UN Doc. S/RES/1925.

<sup>51</sup> For an account of the degree of force employed by MONUC in that period, see Murphy, 'UN Peacekeeping in the Democratic Republic of the Congo' (n 43) 220–2.

<sup>52</sup> UNSC Special Report of the Secretary-General on the Democratic Republic of the Congo and the Great Lakes Region (2013) UN Doc. S/2013/119 paras 60–4.

<sup>53</sup> UNSC Res. 2098 (2013) UN Doc. S/RES/2098 para. 9.

<sup>54</sup> *Ibid.* para. 12b.

<sup>55</sup> *Ibid.* para. 9.

<sup>56</sup> UNSC Res. 2147 (2014) UN Doc. S/RES/2147 para. 1.

<sup>57</sup> UNSC Res. 2211 (2015) UN Doc. S/RES/2211 para. 1.

<sup>58</sup> UNSC Res. 2277 (2016) UN Doc. S/RES/2277 para. 24.

<sup>59</sup> UNSC Res. 2348 (2017) UN Doc. S/RES/2348 para. 26.

<sup>60</sup> UNSC Res. 2409 (2018) UN Doc. S/RES/2409 para. 29.

<sup>61</sup> UNSC Res. 2098 (2013) UN Doc. S/RES/2098 para. 10; UNSC Res. 2147 (2014) UN Doc. S/RES/2147, para. 3; UNSC Res. 2211 (2015) UN Doc. S/RES/2211 paras 40–41; UNSC Res. 2277 (2016) UN Doc. S/RES/2211 paras 47–48; UNSC RES. 2409 (2018) UN Doc. S/RES/2409 paras 56 and 59(IV).

registered slow signs of progress by the DRC to facilitate the exit strategy of the Intervention Brigade and of the entire MONUSCO.<sup>62</sup>

The task of neutralizing armed groups through robust military operations has raised some criticisms among scholars with regard to MONUSCO's compliance with the principles of peacekeeping.<sup>63</sup> This author has already supported the idea that the Intervention Brigade per se does not increase significantly the force employed by MONUSCO, but rather, it simply rationalizes in one specific unit those military tasks that were already performed by other military components of MONUSCO pursuant to its already robust mandate.<sup>64</sup> However, five years of activity demonstrate that the Intervention Brigade and other military components of MONUSCO took such an active role in fighting against armed groups in DRC in the context of actual military operations<sup>65</sup> that the mission cannot be considered impartial/neutral at all.<sup>66</sup> Rather, the Intervention Brigade should be considered a party of the ongoing conflict in DRC,<sup>67</sup> as acknowledged by the Secretary-General himself, who

<sup>62</sup> See e.g. UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (30 June 2014) UN Doc. S/2014/450 para. 89; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2015) UN Doc. S/2015/172 para. 63; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (9 March 2016) UN Doc. S/2016/233 para. 74; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (28 June 2016) UN Doc. S/2016/579 para. 77.

<sup>63</sup> See e.g. Patrick Cammaert, 'The UN Intervention Brigade in the Democratic Republic of the Congo' (2013) *International Peace Institute Issue Brief* 7; Pricilla Fet, 'Tudo de novo no front: MONUSCO, uma nova era nas peacekeeping operations?' (2013) 10 *Revista de Direito Internacional* 169; Bruce 'Ossie' Oswald, 'The Security Council and the Intervention Brigade: Some Legal Issues' (2013) 17 *ASIL Insights*; Marco Longobardo and Federica Violi, 'Quo vadis peace-keeping? La compatibilità dell'Intervention Brigade in Congo con i principi regolanti le operazioni di pace alla prova dei fatti' (2015) 70 *La Comunità internazionale* 245; Lars Müller, 'The Force Intervention Brigade: United Nations Forces Beyond the Fine Line Between Peacekeeping and Peace Enforcement' (2015) 20 *Journal of Conflict and Security Law* 381; Otto Spijkers, 'The Evolution of United Nations Peacekeeping in the Congo From ONUC, to MONUC, to MONUSCO and Its Force Intervention Brigade' (2015) 19 *Journal of International Peacekeeping* 88, 114; Denis M. Tull, 'The Limits and Unintended Consequences of UN Peace Enforcement: The Force Intervention Brigade in the DR Congo' (2018) 25 *International Peacekeeping* 167.

<sup>64</sup> See Longobardo and Violi (n 63) 252–4.

<sup>65</sup> See e.g. UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (30 September 2013) UN Doc. S/2013/581 para. 37; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (17 December 2013) UN Doc. S/2013/757 para. 40; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (5 March 2014) UN Doc. S/2014/157, para. 39; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (30 June 2014) UN Doc. S/2014/450, paras 28, 31, and 54; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (23 September 2014) UN Doc. S/2014/698, paras 55–7; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2015) UN Doc. S/2015/172, paras 35–6, and 38–9; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (26 June 2015) UN Doc. S/2015/486 paras 18–19, and 43; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (9 March 2016) UN Doc. S/2016/233, paras 24, 27, 29, and 41; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (28 June 2016) UN Doc. S/2016/579, paras 26, 32, and 33; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2017) UN Doc. S/2017/206, para. 59; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (29 September 2017) UN Doc. S/2017/826, para. 42.

<sup>66</sup> Longobardo and Violi (n 63) 256–7; Spijkers (n 63) 104.

<sup>67</sup> Longobardo and Violi (n 63) 257–65. This qualification is relevant for the application of international humanitarian law to the Intervention Brigade, a topic explored by Yutaka Arai-Takahashi, 'The Intervention Brigade within the MONUSCO: The Legal Challenges of Applicability and Application of IHL Source' (2015) Zoom-In 13 *Questions of International Law* 5; Devon Whittle, 'Peacekeeping in Conflict: the Intervention Brigade, MONUSCO, and the Application of International Humanitarian Law to United Nations Forces' (2015) 46 *Georgetown Journal of International Law* 837.



expressed serious concerns about the impact of such an extraordinary robust mission on peacekeeping.<sup>68</sup>

### C.ii. *The Use of Armed Force by MINUSMA and UNMISS*

Two other recent peacekeeping missions, MINUSMA and UNMISS, show an interesting trend regarding super-robust mandates.

With regard to the mission in Mali, the mandate of MINUSMA has been configured as a robust mandate since its origins when Resolution 2100 (2013) authorized MINUSMA 'to use all necessary means, within the limits of its capacities and areas of deployment, to carry out its mandate.'<sup>69</sup> This expression has been constantly repeated in every resolution concerning the mandate of the mission.<sup>70</sup> In addition, MINUSMA has been requested twice to 'to achieve its more proactive and robust posture to carry out its mandate'<sup>71</sup> Resolutions 2295 (2016) and 2364 (2017) task MINUSMA with action 'in support of the Malian authorities ... to anticipate, deter and counter threats, including asymmetric threats, and to take robust and active steps to protect civilians ... engaging in direct operations.'<sup>72</sup> Moreover, MINUSMA has to act in 'active defence of its mandate, to anticipate and deter threats and to take robust and active steps to counter asymmetric attacks against civilians or United Nations personnel, to ensure prompt and effective responses to threats of violence against civilians and to prevent a return of armed elements to those areas, engaging in direct operation.'<sup>73</sup>

One of the most peculiar features of MINUSMA is the fact that the mission is deployed in the context of the fight against international terrorism. The MINUSMA mandate is the first peacekeeping mandate with so many and such clear references to counterterrorism actions. For instance, the SC has expressed its concern over 'the volatile security situation, especially the expansion of terrorist and other criminal activities into central and southern Mali as well as the intensification of intercommunal violence in the Centre of Mali'<sup>74</sup> and over 'the transnational dimension of the terrorist threat in the Sahel region, as well as the serious challenges posed by transnational organized crime in the Sahel region, including arms and drug trafficking, the smuggling of migrants, trafficking in persons, and its increasing links, in some cases, with terrorism.'<sup>75</sup> In addition, MINUSMA is tasked with the implementation of the Agreement on Peace and Reconciliation in Mali,<sup>76</sup> and the SC has stressed the need 'to forestall attempts by terrorist groups to derail the implementation of the Agreement.'<sup>77</sup>

<sup>68</sup> Report of the High-Level Independent Panel on Peace Operations on Uniting our Strengths for Peace (n 13) para. 122.

<sup>69</sup> UNSC Res. 2100 (2013), UN Doc. S/RES/2100 para. 17.

<sup>70</sup> See UNSC Res. 2164 (2014) UN Doc. S/RES/2164 para. 12; UNSC 2227 (2015) UN Doc. S/RES/2227 para. 12; UNSC Res. 2295 (2016) UN Doc. S/RES/2295 para. 17; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 para. 18.

<sup>71</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 para. 19.

<sup>72</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295 para. 19(c)(ii); UNSC Res. 2364 (2017) UN Doc. S/RES/2364 para. 20(c)(2).

<sup>73</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295 para. 20; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 para. 20(c)(2).

<sup>74</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295 preamble para. 13; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 preamble para. 14.

<sup>75</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295 preamble para. 21; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 preamble para. 25.

<sup>76</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295 para. 16; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 para. 17.

<sup>77</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295 preamble para. 14; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 preamble para. 15.

Furthermore, a number of non-state actors involved in the armed conflict against the Malian government are described by the MINUSMA mandate as terrorist.<sup>78</sup> On the basis of these and of many other references to terrorism in the mandate of MINUSMA, it has been argued that such an extremely robust mission has been tasked with counterterrorism combat operations.<sup>79</sup> The employment of peacekeepers to combat terrorism is quite a novelty in international law since, normally, states are required to combat terrorism through law enforcement operations conducted at a national level.

The mission dispatched in South Sudan, UNMISS, presents some features which are peculiar in relation to the use of armed force as well. As every robust peacekeeping mission, UNMISS is authorized to 'use all necessary means' to perform its tasks.<sup>80</sup> These tasks include the protection of civilians, which are the main aim of the entire mission.<sup>81</sup> However, the fulfilment of the mandate regarding the protection of civilians has been hampered by a number of attacks from non-state actors against UNMISS personnel and facilities. In order to respond against these threats, the SC has created a specific unit within UNMISS. This unit is called Regional Protection Force, and is authorized to

*use all necessary means, including undertaking robust action where necessary and actively patrolling, to accomplish the [Regional Protection Force] mandate, to: (i) Facilitate the conditions for safe and free movement into, out of, and around Juba, including through protecting the means of ingress and egress from the city and major lines of communication and transport within Juba; (ii) Protect the airport to ensure the airport remains operational, and protect key facilities in Juba essential to the well-being of the people of Juba, as identified by the Special Representative of the Secretary-General; (iii) Promptly and effectively engage any actor that is credibly found to be preparing attacks, or engages in attacks, against United Nations protection of civilians sites, other United Nations premises, United Nations personnel, international and national humanitarian actors, or civilians.*<sup>82</sup>

On the basis of this resolution, the mandate of the Regional Protection Force appears to be robust, proactive, and of an offensive character.

Accordingly, at the moment, in South Sudan there is an already robust mission deployed to protect civilians from attacks, and a specific robust unit within that mission deployed to protect the entire mission from attacks and to guarantee the mission freedom of movement. It seems that the protectors of civilians need some protectors themselves. The UN Secretary-General has reported that the efforts to constitute this specific unit have been unsatisfactory so far.<sup>83</sup>

<sup>78</sup> UNSC Res. 2295 (2016) UN Doc. S/RES/2295 preamble paras 15–16; UNSC Res. 2364 (2017) UN Doc. S/RES/2364 preamble paras 17–18.

<sup>79</sup> See John Karlsrud, 'The UN at War: Examining the Consequences of Peace-Enforcement Mandates for the UN Peacekeeping Operations in the CAR, the DRC and Mali' (2015) 36 *Third World Quarterly* 40, 45–7; Mirko Sossai, 'Il mandato della missione di stabilizzazione in Mali: verso una convergenza tra peacekeeping e anti-terrorismo?' (2016) 3 *Quaderni di SIDI Blog* 333; Mirko Sossai, 'Il mandato delle operazioni di peacekeeping e il contrasto a gruppi terroristici', in Ida Caracciolo and Umberto Montuoro (eds), *Levoluzione del peacekeeping: il ruolo dell'Italia* (Giappichelli 2017) 89; John Karlsrud, 'Towards UN Counter-Terrorism Operations?' (2017) 38 *Third World Quarterly* 1215.

<sup>80</sup> See UNSC Res. 2327 (2016) UN Doc. S/RES/2327 para. 7.

<sup>81</sup> *Ibid.* para. 7(a).

<sup>82</sup> *Ibid.* para. 9 (emphases added).

<sup>83</sup> See UNSC Report of the Secretary-General on South Sudan (covering the period from 16 December 2016 to 1 March 2017) (16 March 2017) UN Doc. S/2017/224 para. 49.

Both cases of MINUSMA and UNMISS are evidence of the recourse to very robust mandates by the SC in situations in which the security of civilians and peacekeepers is threatened by non-state actors conducting armed attacks which, in the case of MINUSMA, are openly labelled as terrorist. These missions do not only stretch the principle of self-defence beyond the usual practice related to robust mandates, but rather, clearly disregard entirely the principle of impartiality/neutrality. In particular, the counterterrorism mandate of MINUSMA is at odds with the idea not to side with any party of an internal conflict, and it is a precedent conflicting with a very recent UN document on peacekeeping, according to which ‘UN peacekeeping missions, due to their composition and character, *are not suited to engage in military counter-terrorism operations*. They lack the specific equipment, intelligence, logistics, capabilities and specialized military preparation required, among other aspects.’<sup>84</sup> These features of these missions are relevant for the evaluation of robust mandates under *jus post bellum*.

### III. Recent Robust Mandates and *Jus Post Bellum*

#### A. Outlining *Jus Post Bellum* Principles

Discussing *jus post bellum* principles from an international law perspective means translating into legal terms some ideas originated in the just war theories. Since there is no unanimity among scholars on these principles and their legal value,<sup>85</sup> this author will refer herein to those principles relevant for robust peacekeeping mandates on which there is some consensus among experts. These principles may be summarized as follows:

- (a) Fairness and inclusiveness of peace settlements. According to Carsten Stahn, *jus post bellum* requires ‘a collective bargaining process, involving a fair hearing of the interests of all parties to the conflict at the negotiating table.’<sup>86</sup> A broad participation must be guaranteed to all political and ethnical components of a post-conflict scenario since only a fully inclusive peace is a just peace under *jus post bellum*.
- (b) The humanization of reactions and a shift from collective to individual responsibility. Some scholars argue that the international community’s reaction should not affect a whole country but, rather, it must be directed only against those who are responsible for serious offences.<sup>87</sup> This principle draws on the experience related to

<sup>84</sup> Report of the High-Level Independent Panel on Peace Operations on Uniting our Strengths for Peace: Politics, Partnership and People (n 13) para. 116, emphasis added, which concludes that counterterrorism operations ‘should be undertaken by the host government or by a capable regional force or an ad hoc coalition authorized by the Security Council’.

<sup>85</sup> A thorough analysis on *jus post bellum* is beyond the purview of this chapter. On this topic, see generally, Carsten Stahn and Jann K. Kleffner (eds), *Jus Post Bellum Towards a Law of Transition From Conflict to Peace* (TMC Asser Press 2008); Vincent Chetail (ed.), *Lexique de la consolidation de la paix* (Bruylant 2009); Larry May and Andrew T. Forcehimes (eds), *Morality, Jus Post Bellum, and International Law* (Cambridge University Press 2012); Stahn, Easterday, and Iverson (n 3). Despite an increasing consensus in the academia, some authors are still sceptical of a normative foundation of *jus post bellum* (see e.g. Eric De Brabandere, ‘The Responsibility for Post-Conflict Reforms: A Critical Assessment of *Jus Post Bellum* as a Legal Concept’ (2010) 43 *Vanderbilt Journal of Transnational Law* 11).

<sup>86</sup> Carsten Stahn, ‘*Jus ad bellum*’, ‘*jus in bello*’ ... ‘*jus post bellum*’?: Rethinking the Conception of the Law of Armed Force’ (2006) 17 *European Journal of International Law* 921, 938.

<sup>87</sup> *Ibid.* 939–40. The author articulates the principle here summarised in a number of different sub-principles.

UN sections that, in the past, have targeted entire communities rather than focusing on the leaders who were responsible for the international law violations that triggered the adoption of the sanctions themselves. In recent practice, UN sanctions have shifted towards a more targeted model that should protect entire communities from suffering the consequences of their leaders misbehaviours.<sup>88</sup>

- (c) Accountability. The principle of accountability is strictly linked to that of individual responsibility. The respect for *jus post bellum* rules must be monitored at national and international levels.<sup>89</sup> It is necessary to guarantee the accountability of all the actors involved in the post-conflict phase in order to foster confidence and guarantee a process that is 'visible, and [includes] distinct activities toward ensuring compliance with its goals and principles'.<sup>90</sup>

The principles briefly summarized herein can be employed in order to assess the recent practice on peacekeeping against the cornerstones of *jus post bellum*.

## B. Consonance and Dissonance Between Recent Robust Mandates and *Jus Post Bellum*

Since peacekeeping operations are the most common expression of the international community's interest in the post-conflict phase, they are at the core of *jus post bellum* discourse. Accordingly, it is not surprising that the aforementioned *jus post bellum* principles have been formulated with the peacekeeping practice in mind. In this context, the need for a fair and inclusive peace process means that '[t]he use of military and police force, coercive diplomacy, intelligence measures, and material incentives may for longer periods remain part of "realist" approaches to change behavior of non-state actors, but it cannot replace political means of persuasion through mediation, negotiation, and reconciliation'.<sup>91</sup> As for the humanization of international reactions, peacekeeping missions are respectful of territorial integrity of states, and multidimensional peacekeeping has taken into account the needs of the local population, working to improve their life conditions and supporting the reconciliation process and the punishment of the most brutal criminals. The most problematic issue is the respect for the rule of law and accountability: although peacekeepers have helped governments maintain order in post-conflict situations, the accountability of peacekeepers as such is hindered by the fact that they enjoy UN immunity.<sup>92</sup>

<sup>88</sup> See generally, Conforti and Focarelli (n 14) 268–70.

<sup>89</sup> On accountability in *jus post bellum*, see Inger Osterdahl and Esther van Zadel, 'What Will *Jus Post Bellum* Mean? Of New Wine and Old Bottles' (2009) 14 *Journal of Conflict and Security Law* 175, 201–4.

<sup>90</sup> Dieter Fleck, '*Jus Post Bellum* as a Partly Independent Legal Framework', in Carsten Stahn, Jennifer S. Easterday, and Jens Iverson (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Cambridge University Press 2014) 43, 55.

<sup>91</sup> *Ibid.* 56. A more enthusiastic scholar considered that *jus post bellum* has been considered in line with peacekeeping, since the latter 'exudes a spirit of consent' (Scheers [n 4] 87).

<sup>92</sup> This complex issue is beyond the scope of this chapter. See the authors cited in note 20, and, more generally, Christopher Leck, 'International Responsibility in United Nations Peacekeeping Operations: Command and Control Arrangements and the Attribution of Conduct' (2009) 10 *Melbourne Journal of International Law* 346; Tom Dannenbaum, 'Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should Be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers' (2010) 51 *Harvard International Law Journal* 141; Francesco Salerno, 'International Responsibility for the Conduct of Blue Helmets: Exploring the Organic Link', in Maurizio Ragazzi (ed.), *The Law of the International Responsibility of the International Organizations, Studies in Honour of Ian Brownlie* (Brill

In cases of recent robust mandates, the link with *jus post bellum* is strengthened by the fact that these missions are at the centre of the interplay of the same legal regimes that are at the basis of the *jus post bellum* discourse.<sup>93</sup> Robust missions are deployed pursuant to UN resolutions, often in the framework of peace agreements; not only must they respect peacetime law—principally, international human rights law<sup>94</sup>—but also international humanitarian law when peacekeepers are actually involved in hostilities.<sup>95</sup> As it was already noted, peacekeepers' involvement in hostilities is far from a rare occurrence in robust mandates tasked with offensive combat responsibilities as in the cases of MONUSCO, MINUSMA, and UNMISS.

However, recent robust mandates and the involvement of UN forces as parties in non-international armed conflicts against armed groups make respect for *jus post bellum* principles more problematic because robust mandates are neither impartial nor neutral, they do not always guarantee a fair response from the international community, and they often overlook mechanisms for ensuring accountability of parties.

First, recent robust mandates are not impartial because specific actors are explicitly targeted by these missions as in the case of MONUSCO and MINUSMA. The deployment of such extremely robust mandates implies that some actors are not meant to be included in post-conflict reconciliation. As mentioned above, the SC decides which non-state actors are to be considered potential partners in the peacebuilding process, and which ones are labelled as spoilers and quickly dismissed (sometimes after having been qualified as a terrorist). The definition of spoilers itself is clearly more political than legal,<sup>96</sup> and the entire UN practice on this distinction seems out of line with a true intent to include every stakeholder in the peace process—a choice that may be reasonable in certain circumstances in which some non-state actors resort to heinous indiscriminate attacks against civilians in order to sabotage the attainment of a just peace.

Further complicating the alleged neutrality of recent robust peacekeeping mandates is the fact that blue helmets may be perceived as supporters of governments that do *not* seek inclusive and just peace settlements. In the case of MONUSCO, for instance, the Secretary-General reported that the Congolese government was preventing the political participation of several groups.<sup>97</sup> Worse, the Intervention Brigade appears to have been employed to pressure armed groups to discuss the terms of their surrenders,<sup>98</sup> so that one may question the authenticity of these armed groups' consent to participate in the peace process. The alleged neutrality of robust peacekeeping mandates is contradicted by the tasks actually performed

2013) 413; Paolo Palchetti, 'International Responsibility for Conduct of UN Peacekeeping Forces: The Question of Attribution' (2015) 70 *Seqüência (Florianópolis)* 19; Moritz P. Moelle, *The International Responsibility of International Organisations: Cooperation in Peacekeeping Operations* (Cambridge University Press 2017).

<sup>93</sup> On the different legal regimes that are at the core of *jus post bellum* discourse, see Vincent Chetail, 'La consolidation de la paix: enjeux et ambiguïtés d'un concept en quête d'identité', in Vincent Chetail (ed.), *Lexique de la consolidation de la paix* (Bruylant 2009) 29, 53–62.

<sup>94</sup> On the respect for international human rights law in peacekeeping missions, see generally Kjetil Mujezinović Larsen, *The Human Rights Treaty Obligations of Peacekeepers* (Cambridge University Press 2014).

<sup>95</sup> See the aforementioned Secretary-General's Bulletin UN Doc. ST/SGB/1999/13 (n 36).

<sup>96</sup> According to the Capstone doctrine (n 13) 43, n. 21, '[s]poilers are individuals or parties who believe that the peace process threatens their power and interests, and will therefore work to undermine it'.

<sup>97</sup> See e.g. UNSC Report of the Secretary-General on South Sudan (covering the period from 16 December 2016 to 1 March 2017 (16 March 2017) UN Doc. S/2015/172, paras 4 and 57.

<sup>98</sup> UN Security Council, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (2014) UN Doc. S/2014/157, para. 18.

by extremely robust units: the fact that the mandate of MINUSMA has been shaped in the framework of counterterrorism policies clearly put the entire mission on the side of the government against the insurgents. Accordingly, the fact that a UN mission openly uses force against one or more actors, and in patent support of another, may impair the achievement of fair and inclusive peace settlements.

Second, recent robust mandates do not always guarantee a selective and fair response from the international community. In at least one case, the Secretary-General acknowledged that military operations conducted by MONUSCO affected entire areas, creating displacement.<sup>99</sup> It should be recalled that the use of force in general—and by peacekeepers in particular—must be a last resort option, particularly in light of the impact that military operations have on civilians. Accordingly, recent robust mandates may be out of line with the *jus post bellum* principle that solutions non-affecting an entire population must be preferred.

Furthermore, robust peacekeeping mandates often fail to respect the rule of law or provide accountability mechanisms. For instance, in the case of MONUSCO, the UN is facing certain embarrassment in supporting military operations led by the Congolese armed forces, which have been facing serious allegations of human rights abuses. According to the UN Secretary-General, as of 2016, 62% of human rights violations in eastern DRC are attributable to the state actor, and only 32% to the armed groups that the Intervention Brigade is supposed to neutralize.<sup>100</sup> In order to avoid complicity in these violations, MONUSCO is following the Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces, according to which UN support ‘cannot be provided where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures.’<sup>101</sup> Consequently, MONUSCO refused to join a DRC military operation due to allegations of human rights violations against recently-appointed generals.<sup>102</sup> The government, however, did not refrain from launching that operation, nor did it remove those officials.<sup>103</sup> From this episode, it is apparent that the UN Due Diligence Policy is not a sufficiently effective instrument of human rights protection when peacekeepers are involved in actual hostilities.<sup>104</sup>

In brief, although robust mandates are not themselves in conflict with *jus post bellum*, and taking into account the fact that robust mandates should be assessed also in light of the missions’ activities that do not imply the use of armed force, there is room to argue that

<sup>99</sup> UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (9 March 2016) UN Doc. S/2016/233, para. 49.

<sup>100</sup> UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (9 March 2016) UN Doc. S/2016/579, para. 41. See also UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (3 October 2016) UN Doc. S/2016/833 para. 73.

<sup>101</sup> UNGA 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 (5 March 2013) UN Doc. A/67/775–S/2013/110, para. 1.

<sup>102</sup> UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2015) S/2015/172, para. 37.

<sup>103</sup> Ibid; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (9 March 2016) UN Doc. S/2016/233, para. 25.

<sup>104</sup> For this opinion, with specific reference to the activity of the Intervention Brigade in DRC, see Helmut Philipp Aust, ‘The UN Human Rights Due Diligence Policy: An Effective Mechanism Against Complicity of Peacekeeping Forces?’ (2015) 20 *Journal of Conflict and Security Law* 61.

proactive and offensive military operations by peacekeepers may contradict or endanger the *jus post bellum* principles.

#### IV. Towards a Just Peace? *Jus Post Bellum* and the Effectiveness of Recent Robust Mandates

After having described the evolution of peacekeeping operations, studied the most robust mandates, and assessed the compatibility of such extreme mandates with *jus post bellum* principles, it still remains to be determined whether robust mandates are effective in order to attain a just peace.<sup>105</sup> A closer look into the situations affected by these mandates offers a partially negative answer.

As a preliminary matter, one has to make a distinction between short-term and long-term goals. For instance, MONUSCO military components, the Intervention Brigade among them, achieved some important immediate goals, as the defeating of the armed group Mouvement du 23 mars.<sup>106</sup> As for the direct protection of civilians, it has been reported that the envisaged early warning system proved effective in most occasions.<sup>107</sup>

However, as for the long term, MONUSCO proved unable to neutralize all the armed groups destabilizing the DRC; rather, these groups are still active, and after several years of deployment of the Intervention Brigade, the situation of human rights and individual security in east DRC is still a matter of utmost concern.<sup>108</sup> Moreover, MONUSCO failed to implement an effective exit strategy, and its military components are still necessary to support the governmental authority against non-state actors in certain parts of the region.<sup>109</sup> Actually, MONUSCO has strengthened DRC governmental authority with its action, but failed to support military reforms that would have allowed the UN to give back to the Congolese government its responsibilities regarding the protection of civilians. From the aforementioned complaints of the Secretary-General about the lack of serious efforts by DRC regarding MONUSCO exit strategy (Intervention Brigade included), one might wonder whether such robust support produced tardiness in the DRC development of its own structures. However, it should be noted that the Secretary-General at the same time emphasizes that MONUSCO's mandate (military components included) should be renewed since it is vital for the protection of civilians and the fight against armed

<sup>105</sup> See generally Denis M. Tull, 'UN Peacekeeping Missions During the Past Two Decades. How Effective Have They Been?', in Joachim Krause and Natalie Ronzitti (eds), *The EU, the UN and Collective Security. Making Multilateralism Effective* (Routledge 2012) 117.

<sup>106</sup> S/2013/757, paras 2 and 97; Tull, 'The Limits and Unintended Consequences' (n 63) 182. The menace of M23 against civilians had been one of the factors triggering the deployment of the Intervention Brigade (UNSC Res. 2098 (2013), preamble and paras 7–8.

<sup>107</sup> See e.g. UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (25 September 2014) UN Doc. S/2014/698, paras 50–4; UNGA Letter dated 26 June 2015 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General (1 July 2015) UN Doc. A/69/697-S/2015/489, para. 44.

<sup>108</sup> See e.g. UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (28 June 2016) UN Doc. S/2016/579, para. 21; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2017) UN Doc. S/2017/206, paras 28–34. See also, Tull, 'The Limits and Unintended Consequences' (n 63) 183–5.

<sup>109</sup> See e.g. UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (9 March 2016) UN Doc. S/2016/233, para. 74.

groups<sup>110</sup>—demonstrating that after five years of MONUSCO's robust engagement, DRC is far from being pacified.

Furthermore, such a partial / not neutral mission as MONUSCO has become since the deployment of the Intervention Brigade might have worsened the safety and security conditions of the UN personnel deployed in DRC. According to the Secretary-General, who initially had feared an escalation of threats,<sup>111</sup> there is no general increase in danger,<sup>112</sup> but, rather, the attacks only become more frequent in certain areas.<sup>113</sup> However, in December 2017 MONUSCO suffered the most serious attack ever in the history of UN peacekeeping, which resulted in fifteen casualties and many more injured peacekeepers.<sup>114</sup>

From a wider perspective, robust mandates are not a guarantee of safety and security for the UN personnel as clearly demonstrate by the case of UNMISS, where the already robust mandate of the UNMISS has been recently modified so that it will be deployed a unit with the mandate to protect those same UN units involved in the protection of civilians.<sup>115</sup> Similarly, there are serious concerns regarding the security of MINUSMA since the mission, albeit with a robust mandate, has been increasingly targeted by non-state actors on a number of occasions.<sup>116</sup>

In brief, robust mandates may have some immediate positive effects on countries that are striving to emerge from an internal armed conflict. However, in the long term, they may not be effective at addressing the roots of the conflict, but rather, they may become just additional actors involved therein. Accordingly, recent robust mandates are not the most suitable international tools to reach a just peace in post-conflict scenarios since their action has met scant success in fulfilling the long-term goals of the mandates.

## V. Conclusion

Sadly, recent robust mandates seem unable to accomplish their tasks and to contribute significantly to a just and lasting peace as required by *jus post bellum*. Rather, often these mandates complicate even more the already blurred divide between peace-time and war-time, a core issue to *jus post bellum* scholars. The failure of these robust mandates to contribute

<sup>110</sup> Ibid.

<sup>111</sup> UNSC Rapport du Secrétaire général sur la Mission de l'Organisation des Nations Unies pour la stabilisation en République démocratique du Congo (30 September 2013) UN Doc. S/2013/581, paras 66–8; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2017) UN Doc. S/2017/206, 64.

<sup>112</sup> See e.g. UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (25 September 2014) UN Doc. S/2014/698, para. 84; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (9 March 2016) UN Doc. S/2016/233, para. 64.

<sup>113</sup> UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (30 December 2014) UN Doc. S/2014/956, para. 34; UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2015) UN Doc. S/2015/172, para. 45. See also UNSC Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (10 March 2017) UN Doc. S/2017/206, para. 51.

<sup>114</sup> See UN Press Release 'At Least 71 United Nations Associated Personnel Killed in Malicious Attacks against Peacekeeping Operations during 2017' (26 January 2018) UN Doc. ORG/1663 available at <https://www.un.org/press/en/2018/org1663.doc.htm> accessed 19 May 2019.

<sup>115</sup> UNSC Res. 2304 (2016) UN Doc. S/RES/2304 paras 7–10.

<sup>116</sup> See UN Press Release (n 114).



to a just peace should be borne in mind by the SC, which, in 2013, dispatched a very robust mandate with the creation of the Intervention Brigade, stressing at the same time its exceptionalism and its non-precedent value.<sup>117</sup> However, notwithstanding these cautious words, the Intervention Brigade has been confirmed five times so far, and an exit strategy in the short term does not appear realistic. Worse, that model has opened the door to other increasingly robust mandates in Mali and South Sudan, and today the extremely robust mandates of MONUSCO, MINUSMA, and UNMISS seem part of a clear upward trend towards an even more militarized model of peacekeeping.

Perhaps, the SC should carefully evaluate the pros and cons of such mandates under the *jus post bellum* principles,<sup>118</sup> and try to find different solutions to the most troubled post-conflict scenarios rather than implementing the same strategy over and over again with the hopes of achieving a successful outcome, notwithstanding the growing evidence that such a strategy is ineffective. For instance, the SC could rely on the Report of the High-Level Independent Panel on Peace Operations on Uniting our Strengths for Peace, which is rather sceptical on mandates that authorize peacekeepers to conduct military operations and counterterrorism military actions.<sup>119</sup> It seems that the SC completely ignored this report when it confirmed the Intervention Brigade in DRC and prolonged the MINUSMA's mandate in Mali.

Although very robust mandates are, in certain circumstances, required to protect civilians,<sup>120</sup> it is not by chance that robust peacekeeping missions, even after several years of deployment, have failed to achieve a just peace in the areas in which they have been deployed. In this author's view, these mandates are becoming more and more robust every year in the false hope that they may finally prove effective. However, notwithstanding the prolonged character of these mandates, the achievement of a just peace seems to be an unlikely scenario in the near future. Arguably, there is a clear link between the increase of robustness of a peacekeeping mandate and the span of time in which the mission is deployed in a troubled area, but unfortunately, international law scholarship devoted scant attention to this correlation.<sup>121</sup> Ultimately, it should be borne in mind that peacekeeping operations should represent exceptional measures rather than long-term solutions deployed indefinitely and without a clear exit strategy.

<sup>117</sup> UNSC Res. 2098 (2013) UN Doc. S/RES/2098, para. 9. For an interesting discussion on the value of the Intervention Brigade as a precedent, see Diana Kearney, 'The Slippery Slope of UN Peacekeeping: Offensive Peacekeeping in Congo and Beyond' (2016) 19 *Max Planck Yearbook of United Nations Law* 100.

<sup>118</sup> The SC could rely on the Report of the High-Level Independent Panel on Peace Operations on Uniting our Strengths for Peace (n 13), which is rather sceptical on mandates that authorise peacekeepers to conduct military operations and counter-terrorism military actions (paras 118–23). It seems that the SC completely ignored this report when it confirmed the Intervention Brigade in DRC and prolonged the MINUSMA's mandate in Mali.

<sup>119</sup> *Ibid.*

<sup>120</sup> Fleck, 'Jus Post Bellum' (n 90) 55.

<sup>121</sup> To the best knowledge of this author, there is no comprehensive study regarding the temporal element in peacekeeping operations (apart from María Julià Barceló, 'El factor tiempo en el proceso de planificación, creación y despliegue de las misiones de paz de la Unión Europea' (2015) 67 *Revista española de derecho internacional* 123, which, however, analyses different issues).