



Center for International and Security Studies at Maryland
School of Public Policy, University of Maryland

Civil Protection and the Image of the “Total Spoiler”

Reflections on MONUC Support to Kimia

By Daniel H. Levine

CISSM Working Paper

October 2010

Civilian Protection and the Image of the “Total Spoiler:” Reflections on MONUC Support to Kimia

II

Daniel H. Levine

Abstract

Important work has been done recently on operationalizing military protection of civilians. Initiatives by the UN, individual nations, and NGOs have tried to translate the general mandate to protect civilians from attack and abuse into specific strategic and tactical principles. Most of this work has focused on how militaries ought to *react* to direct attacks on civilians, but thinking about civilian protection should also include a serious examination of the ways in which the approach of military organizations to the problem of “spoiler” groups can affect the level and dynamics of attacks on civilians - where armed groups are interested in violent control of civilian populations, attempts to “dislodge” them may substantially increase the level of violence against civilians (beyond the dangers to be expected from being near active fighting.) In 2009, the UN supported the Democratic Republic of the Congo’s military in operations to dismantle the Hutu-dominated FDLR militia, at massive human cost. Critics have primarily focused on the UN’s failure to protect civilians from direct attack, consonant with the general discourse on tactics. These criticisms are valid, but in this essay I argue that two additional considerations should be kept in mind: the way that military operations can affect violence against civilians, and the way that moralizing the approach to armed groups can limit military and political options for protecting civilians.

Introduction

Protection of civilians is a topic of intense discussion in peacekeeping circles, as well as with respect to other operations that emphasize the creation of a stable security

environment, such as security reform and stability operations.¹ The concern is both practical and moral. Practically, making civilians safe (and making sure they feel safe) is a key component of “winning hearts and minds.” Morally, the presence of peacekeepers seems to be justifiable, if at all, by the benefits in terms of peace and security that they bring the local population. Even “traditional” peacekeeping that focused on mediation and separation of states or organized armed factions was ultimately justified in terms of the UN’s mission to save people from “the scourge of war.”

Two issues have loomed large. First, how can peacekeeper mandates be strengthened so as to allow peacekeepers to more effectively protect civilians, especially when force must be used? Second, if force is going to be used, how can peacekeepers do so effectively? While peacekeepers protect civilians from abuses in many cases without the use of force, cases in which armed groups have committed heinous abuses loom large, and a great perceived weakness of peacekeeping forces has been their unwillingness or inability to use coercion to rein in violent abusers.

The United Nations Mission in the Congo’s (MONUC) support to the Democratic Republic of the Congo’s (DRC) national army’s (FARDC) military operations against the *Forces Démocratiques de L’iberation du Rwanda* (FDLR) throughout 2009 – operation “Kimia II” – is an interesting case for thinking about civilian protection. On paper, Kimia II may have looked like a prime example of what advocates for more robust civilian protection have called for. The FDLR were (and are) involved in serious human rights abuses in the DRC, and their core leadership is made up of former members of the Rwandan regime that perpetrated the 1994 genocide there — a very attractive target for aggressive peacekeeping operations. In addition, a partnership between the UN and local forces, with locals taking the lead while the UN provides logistical, intelligence, and planning support, looks like a plausible and legitimate model for peacekeeping that verges on counterinsurgency, allowing a distinct niche for the UN when force is used to protect civilians.

Nonetheless, MONUC’s involvement in Kimia II has been severely criticized, and for good reason.² Critics have argued that MONUC ought either to have used its

¹See, e.g. Holt and Berkman, *The Impossible Mandate*; Holt, Taylor, and Kelly, *Protecting Civilians*; Sewall, Raymond, and Chin, *Mass Atrocity Response Operations*; Weir, *The Last Line of Defense*; Giffen, *Addressing the Doctrinal Deficit*; *Report of the Secretary General on the Protection of Civilians in Armed Conflict*; Cohen and Gingerich, *Protect and Serve or Train and Equip*; Headquarters, Department of the Army, *Stability Operations*.

²Atama, *Field Dispatch: South Kivu - No Peace in Sight*; Mahtani et al., *Final Report of the Group of Experts on the Democratic Republic of the Congo*; Nienaber, *Satellite Imagery Proves Catastrophic Failure of Joint Rwanda/Congo Military Exercises*; Congo Advocacy Coalition, *DR Congo: Civilian Cost of Military Operation is Unacceptable*; Thomas-Jensen, Atama, and Caey-

leverage to force the FARDC to refrain from abusing civilians, or refused to support it, and that MONUC did not adequately defend civilians from predictable FDLR reprisals — while endorsing the goal of eliminating the FDLR. Given the focus of this criticism and the “on paper” promise of the Kimia II model, it is worth asking what lessons can be learned from its failings. Was Kimia II a good idea poorly executed? Or do the problems to which the operation gave rise indicate that the role of military operations in protecting civilians needs further revision?

Though criticisms about execution are certainly valid, the level of violence against civilians seen in Kimia II also represents a failure to take into account the ways in which military operations change the dynamics of violence against civilians, and the critics who endorsed the goal of eliminating the FDLR by force also seem to dismiss that danger. We should not limit our concern just to the ways in which peacekeepers can intercede in abuses of civilians, but also their role in (albeit unintentionally) creating them. This requires a broader focus on the context of violence against civilians, rather than just regarding such violence as an “external shock” to which peacekeepers must respond.

Levels of violence in Kimia II in part reflected two aspects of MONUC’s approach. First, military operations to eliminate the FDLR - a group that, for all its genocidal past, seems more interested in controlling and exploiting populations than eradicating them - created incentives for increased abuse of civilians by both the FDLR *and* the FARDC. This increased violence could have been much better contained and mitigated, but not eliminated entirely, and the likelihood of such violence should be considered when any operations aimed at “protecting civilians” are undertaken. Second, the nature of MONUC’s mandate, and the particular way in which the FDLR’s role was moralized, seems to have played a role in limiting the options that MONUC (and outside analysts) are willing to contemplate for approaching the organization. By trying to take the “moral high ground,” MONUC may actually be cutting off options with much to morally recommend them.

Context of the Kimia II Operation

Here I will only provide some basic context about the Kimia II operations. For a comprehensive (if in some places controversial) overview of the warfare in the DRC, see Prunier (*Africa’s World War*).

maex, *An Uneasy Alliance in Eastern Congo*; Thomas-Jensen, *The Counterinsurgency Debate: A Tale of Two Countries*; Sawyer and Van Woudenberg, *You Will Be Punished*; Olson and Smith, *DR Congo: Protect Civilians and End Military Operations*; Vircoulon, *After MONUC*.

The eastern DRC, particularly the Kivu provinces, have been the scene of bloody conflict between forces of the national government and several paramilitary groups. Two of the most powerful, most prominent, and best-organized groups were the FDLR and the National Congress for the Defense of the People (CNDP). Both have ties to the Rwandan genocide. The FDLR's leadership is made up of members of the Hutu-dominated former genocidal regime.³ The leader of the CNDP, Laurent Nkunda, portrayed himself as a defender of Congolese Tutsis against further ethnic violence, especially by the FDLR, and the group was widely believed to be supported by the Rwandan government.⁴

From its inception until about the end of 2008, the CNDP seemed to present the largest threat to the DRC government, and the FARDC even occasionally allied with the FDLR against Nkunda's group.⁵ But, in early 2009, following an apparent *rap-prochement* between the governments of the DRC and Rwanda, Nkunda was deposed as head of the CNDP and arrested in Rwanda, and the CNDP were assimilated into the FARDC through an "accelerated" process.⁶ While the integration process was deeply imperfect, it cleared the way for ex-CNDP to fight alongside the FARDC to defeat the FDLR.

The first outcome of this partnership was *Umoja Wetu*, a joint operation between the FARDC and the Rwandan military. After *Umoja Wetu* ended in late February 2009, the FARDC began *Kimia II*, with backing from MONUC. MONUC provided logistical, planning, and fire support to the FARDC, as well as rations.⁷ The aim of both operations was to drive FDLR cadres out of their zones of control, and disarm them (by force if necessary). The UN had been shut out of *Umoja Wetu* planning, and so its support to *Kimia II* also represented an opportunity to exert some more control over the course of anti-FDLR military operations.⁸ *Kimia II* ended

³African Rights, *A Welcome Expression of Intent*.

⁴See, e.g. McCrummen, "For Tutsis of Eastern Congo, Protector, Exploiter or Both?"; International Crisis Group, *Congo: Bringing Peace to North Kivu*, pp. 7–8; Kavanagh, "Five Million Dead and Counting"; "Profile of DR Congo Dissident General Laurent Nkunda"; Stearns et al., *Final Report of the Group of Experts on the Democratic Republic of the Congo*, §27, 29, 61–68.

⁵International Crisis Group, *Congo: Consolidating the Peace*, p. 14; Stearns et al., *Final Report of the Group of Experts on the Democratic Republic of the Congo*, §§102-113.

⁶McCrummen, "Rwanda's Arrest of Congolese Rebel Leader Marks a Key Shift"; Mahtani et al., *Interim Report of the Group of Experts on the Democratic Republic of the Congo*, §§20–24, 29–40; Mahtani et al., *Final Report of the Group of Experts on the Democratic Republic of the Congo*, §§180–199.

⁷Sawyer and Van Woudenberg, *You Will Be Punished*, p. 137; *Twenty-Seventh Report of the Secretary General on the United Nations Organization Mission in the Democratic Republic of the Congo*, §15.

⁸Sawyer and Van Woudenberg, *You Will Be Punished*, pp. 135–136.

in December 2009.

The Dynamics of Civilian Attacks - Theory

Attacks on civilians escalated to distressing levels during Kimia II.⁹

Unfortunately, this effect on civilians was predictable. It is tempting to see violence against civilians as irrational savagery, especially in Africa where conflicts tend to be portrayed as savage affairs anyway.¹⁰ But, as Sawyer and Van Woudenberg (*You Will Be Punished*, p. 52) note, FDLR killings during Kimia II showed evidence of being systematic and ordered by the command structure, and there are many reasons why armed groups attack civilians — most of them rational if not moral; e.g., militants may

- have genocidal intentions toward a class of civilians¹¹
- desire the land, livestock, or other material goods possessed by a civilian population (and so attack civilians to eliminate or drive off the population)
- use egregious violence against civilians to influence international public opinion, either to draw attention to a conflict or convince international actors to back down
- violently reinforce social norms such as gender dominance or racial hierarchy
- use violence as a means of in-group bonding
- callously attack civilians that another party is using as “human shields”
- attack civilians ostensibly under an enemy’s protection to undermine civilian confidence in and loyalty to that enemy
- desire to ensure that civilians comply with the group’s demands (for food, portage, “wives,” etc.) and do not collaborate with enemies, and use violence as an incentive

⁹On absolute numbers, see Congo Advocacy Coalition, *DR Congo: Civilian Cost of Military Operation is Unacceptable*; On escalation, e.g. Sawyer and Van Woudenberg, *You Will Be Punished*, notes that rates of sexual violence doubled in 2009, during the operations.

¹⁰See, e.g. Gettleman, “Africa’s Forever Wars”.

¹¹The legal definition of “genocide” applies only to the destruction of certain kinds of groups - I intend this category to also cover genocide-like attacks made against groups that do not support a legal finding of genocide, such as political, class, or gender groups.

- attack civilians without any grand plan, because the leadership cannot or will not constrain individual combatants who use violence against civilians to take what they want, pursue personal vendettas, etc.

Of course, groups may attack civilians for different reasons in different contexts (or even for multiple, overlapping or confused, reasons at once). And groups may *harm* civilians without *attacking* them - the proverbial “collateral damage.” When insufficient care has been taken to protect civilians from the effects of military action, this unintentional harm to civilians may be just as immoral as a direct attack.¹²

Different motivations for violence give rise to different patterns of violence. A group that abuses civilians to ensure compliance may be relatively benign so long as it does not face significant challenges to its control. By contrast, when a genocidal group gains stable control of a target population, it may seize the chance to begin killing in earnest. Protecting civilians from violence also requires taking these dynamics into account when deploying military force - an issue not entirely captured by a focus on doctrinal and tactical issues for defending civilians from ongoing or imminent attacks. The point here is that how a military force acts may not only affect their success in stopping attacks, but may have a profound impact on when and whether those attacks occur at all.

Stathis Kalyvas (*The Logic of Violence in Civil War*) has analyzed the reasons why groups that aim to control civilian populations use violence against civilians. While direct violence against civilians is “indiscriminate” in the sense that it violates the standard *jus in bello* principle of discriminating between combatants and civilians, it is often not “indiscriminate” in the sense of being randomly targeted.¹³ Armed groups interested in population control have strong incentives to avoid indiscriminate violence.

First, while indiscriminate violence may engender fear, it also tends to create anger and hatred, and so gives civilians an incentive to find ways to work with your enemy, even if they were not previously aligned with them. Second, it may cow a population, but if compliance does not bring safety (because violence does not reliably target all and only non-compliant civilians), civilians will still have little incentive to cooperate, especially at personal cost. When indiscriminate violence is not an end in itself (as in genocide) it is likely to occur only when the side using it is confident that civilians will not be able to defect to the other side and so will cooperate in the interest of ending the fighting entirely; or when a strategy of control

¹²See Rodin, “Terrorism”.

¹³Unless otherwise indicated, I will follow Kalyvas in using the latter, descriptive rather than normative, meaning.

is combined with a different strategy of harming civilians on the theory that the opponents' concern for civilian well-being will cause them to hesitate.¹⁴

However, as Kalyvas himself notes, it is easy to overstate the level of indiscriminate violence in a conflict. Discriminate violence can be widespread, and indiscriminate violence is not the same as *badly targeted* violence. An armed group may have incentives to target all and only civilians who are cooperating with the enemy, yet may find it very difficult to get accurate information about who those civilians are. If it errs on the side of attacking suspected collaborators, many civilians may be killed, including many who were not collaborators, without the violence being indiscriminate. Where armed groups have poor intelligence, they may use geography or ethnicity as crude proxies for collaboration with the enemy. In addition, groups may adhere to views on collective responsibility that cause them to attack many individuals not directly involved in whatever defection they are trying to punish. This may either be a way of punishing collaborators indirectly by targeting vulnerable people they care about, or an expression of a genuine belief in collective guilt. We should not confuse attacks on civilians that are immoral or wrong with attacks that are untargeted. There is a big difference in the patterns of violence exhibited by a group that will, say, kill everyone in a village as “collaborators” based on the fact that government forces based nearby without resistance, and a group that will kill everyone in a village because their goal is to wipe out the ethnic group that lives there.

Dynamics of FDLR Violence During Kimia II

Despite the fact that the FDLR leadership are former *genocidaires*, they do not seem to have had genocidal aims towards the Congolese population under their control. The FDLR economically exploited civilians in all areas under their control, but also served as a local authority in some areas, and intermarried with the local population.¹⁵ The FDLR, like most insurgent groups, are not *merely* predators. They require resources from the civilian population to survive and as a result have an interest in maintaining the compliance of that population through a mixture of threats and inducements.

During Kimia II, the stated reasons the FDLR gave for attacking civilians also seemed consistent with the use of violence for control. The FDLR told victims

¹⁴Kalyvas, *The Logic of Violence in Civil War*, ch. 6, esp. pp. 160—171.

¹⁵Boshoff and Hoebeke, *Peace in the Kivus*, p. 3; Sawyer and Van Woudenberg, *You Will Be Punished*, p. 51; Life and Peace Institute, *Analyse de Dynamiques*.

before and/or during the attacks that they were being attacked for cooperating with the FARDC, and internal records and conversations within the FDLR indicate that attacks on civilians were intended as retaliation for perceived collaboration and reprisals for FARDC/MONUC/Rwandan attacks on the FDLR.¹⁶ The fact that attacks tended to focus on civilians in areas “cleared” by the FARDC and civilians living near FARDC bases indicates that this public justification for the attacks was not just a smokescreen for, e.g., genocide.

Most of the FDLR violence during Kimia II, catalogued most precisely in the Human Rights Watch report, seems to have been at least semi-selective. The FDLR punished entire villages for “collaboration” with the FARDC; collective punishment may deter active collaborators who care about their neighbors and family members, and village membership may be a proxy for collaboration. Both uses of violence against civilians are strategically coherent and an outgrowth not only of a cavalier attitude toward civilian life, but of poor information.¹⁷

Lack of information (assuming that callousness among FDLR leadership is a constant) is crucial to understanding the spike in violence by the FDLR during Kimia II. According to Kalyvas’ analysis, would-be-*selective* violence against civilians is likely to increase in areas of transition. Where the FDLR was firmly in control, it had little need for overt violence against civilians and good access to information about FARDC collaborators; its stable control both let it get to know local civilians and provide benefits in return for information. Where the FARDC or another group was firmly in control, the FDLR could not effectively bring violence to bear. But where the FDLR was dominant, but not completely in control, it had strong incentives to use violence against civilians, civilians had more opportunity and incentive to collaborate with the FARDC, but the FDLR lost the stable connection to the population that would let it carefully target violence. This combination of strong incentives for civilian defection, urgent need to deter defection, and poor ability to distinguish between defectors and other civilians is a potent recipe for widespread violence against

¹⁶Sawyer and Van Woudenberg, *You Will Be Punished*, pp. 51–57; Mahtani et al., *Final Report of the Group of Experts on the Democratic Republic of the Congo*, §345–§396.

¹⁷Importantly, note that I am *not* implying that killing only active collaborators - people who in fact provided some material support to the FARDC - would be morally acceptable. Leaving aside any judgments about the relative merits of the FARDC and the FDLR, most civilian “collaborators” in situations like this have little choice in the matter - if the FDLR, or the FARDC, or whomever, shows up and demands food, reasonable people will comply. Holding the relatively powerless responsible for the consequences of their lack of power is morally perverse, an insight that is at the moral heart of the idea that civilians should be protected, even once we drop the fiction that they are never materially implicated in a war effort. See also Slim (*Killing Civilians*, pp. 271–272).

civilians.¹⁸

The structure of violence against civilians in control cases is symmetrical — not only insurgents use violence against civilians to ensure compliance and deter defection. Despite the 2006 elections, it would be naïve to think that Congolese were by default inclined to respect and cooperate with the government, especially in areas where the FDLR or other militia groups had provided some quasi-governmental services, had demonstrated their willingness and ability to harm civilians who cooperated with the government, and where the government had not proven its will and ability to protect people from harm. So, the government forces had strong incentives to use violence against civilians to secure control as they moved in, balanced only by any personal commitments they may have had to protection of civilians (likely weak in the divided DRC) and the leverage of MONUC (which it could probably have made more of). Even highly disciplined militaries with a deeply ingrained culture of respect for civilians engage in unfortunate abuses of civilians when taking control of an area, and it is inexcusable but also unsurprising that the FARDC attacked civilians during Kimia II (often for the same stated reasons as the FDLR, including “punishment” for collaboration).

The ex-CNDP members of the FARDC may also have introduced an asymmetry not to civilians’ benefit. While the FDLR seems more interested in looting or dominating populations under its control than killing or driving them off, ex-CNDP elements of the FARDC have been accused of using military operations as cover to clear areas for settlement by Tutsi (either Rwandans or Congolese Tutsi who fled to Rwanda).¹⁹ If these accusations are true, civilians in areas taken by ex-CNDP FARDC units from FDLR units would face a double threat - violence associated with an attempt to hold onto population control by retreating FDLR, followed by differently motivated violence aimed at driving them out once the ex-CNDP FARDC had control.

Taking Sides

The approach taken by MONUC and the FARDC was one that was likely to increase FDLR abuses against civilians. Even had MONUC done all that it could to protect civilians from attack, the strategy of Kimia II and the logic of control was highly likely to inspire greater violence against civilians. Anti-civilian violence by control-oriented groups will be highest in areas where one group is dominant but not in complete

¹⁸Kalyvas, *The Logic of Violence in Civil War*, ch. 7.

¹⁹Stearns, *MONUC Internal Report About ex-CNDP Killings*.

control; other things equal, therefore, creating more asymmetrically contested areas is likely to increase overall violence against civilians, in the short term.

Both the FARDC and MONUC seem to have made FDLR “strongholds” a high priority. After the conclusion of Kimia II, one of the key boasts of the FARDC’s spokesman for the operation, Maj. Ekenge, was that “all the FDLR strongholds have been dismantled.”²⁰ Toward the end of the operation, I asked a member of the MONUC military leadership whether areas of relatively stable FDLR control made a military priority, and was told that areas of strong and stable FDLR control were struck first where possible.²¹ Given the goal of forcibly disarming the FDLR, the strategy makes sense. Leaving the FDLR in a position of *de facto* governance was not an option, so eventually those strongholds needed to be attacked and control given to the DRC government.

Critics generally accepted that the operation’s heart was in the right place. The Congo Advocacy Coalition (*DR Congo: Civilian Cost of Military Operation is Unacceptable*) maintained that “disarming the FDLR militia should remain a top priority for the Congolese government and UN peacekeepers,” and the Enough project’s Colin Thomas-Jensen (*The Counterinsurgency Debate: A Tale of Two Countries*) argued that “the motivation for the Congolese-UN offensive against [the FDLR]... is generally sound.” One of International Crisis Group’s (*Congo: Five Priorities for a Peacebuilding Strategy*, p. ii) key recommendations was that MONUC, the DRC, and Rwanda, “[s]uspend Operation Kimya II and plan new joint military operations against the FDLR...” (emphasis mine).

MONUC’s own mandate reinforced a focus on eliminating the FDLR. While much is made of the fact that MONUC’s mandate at the time of Kimia II made the protection of civilians the absolute top priority, that is only partially correct and may be misleading. MONUC’s mandate made the “protection of civilians... under imminent threat of violence” its top priority, listing it as (a) on the ordered list of mission tasks in paragraph 3, and re-emphasizing this priority in paragraph 6.²² Interpretation of MONUC’s mandate, both within the mission and by outside analysts, is complicated. But taken literally, the language of *imminent threat* makes this a fairly limited priority. Broader operations to “prevent attacks on civilians and disrupt the military capability of illegal armed groups that continue to use violence,” are relegated to priority (f), and mentioned after deterring threats to the Goma and Nairobi peace processes. MONUC might have been obliged to “drop everything”

²⁰“After Operation Kimia II: MONUC Outlines Cooperation with FARDC in Operation Amani Leo”.

²¹Confidential interview with a MONUC military officer, Goma (DRC), November 2009

²²United Nations Security Council, *Resolution 1856 (2008)*.

if any of its forces were confronted with civilians under direct attack, but was not required to arrange its operations so that it was likely to be so confronted — in fact, were (e.g.) MONUC to react to the *general* threat posed to civilians by the FDLR by devoting resources to protecting outlying villages on the border of FDLR zones of control at the expense of the protection of UN facilities in more secure areas like Goma it arguably would have been in violation of its mandate.

Of particular interest is the fact that MONUC’s mandate made protection of the Nairobi and Goma peace processes of equal priority with protecting civilians.²³ While both processes were arguably dead by the time of Kimia II, their spirit seems to have shaped MONUC’s approach. What is not immediately obvious from reading MONUC’s mandate is that both agreements/peace processes exclude the FDLR and define it as a clear enemy.

The Nairobi Communiqué²⁴ was an agreement between the governments of the DRC and Rwanda to “address the threat posed. . . by the ex-FAR/Interahamwe.”²⁵ The DRC undertakes to “[l]aunch military operations. . . to dismantle the ex-FAR/Interahamwe as a genocidal military organization in the DRC.”

The Goma peace negotiations issued an *Acte d’Engagement* in January 2008 signed by representatives of armed groups active in the Eastern DRC.²⁶ The FDLR were not signatories to the *Acte*, and in fact were “foreign forces” explicitly excluded from the agreement it represented. The Technical Committee on Peace and Security established by the *Acte* was charged with “beginning the implementation of the plan issued in the Nairobi joint communiqué on the disarmament and repatriation of foreign armed groups.”²⁷ This task was linked to the cease-fire and to the integration of rebel forces into the FARDC, the details of which were to be worked out “taking account of the presence of foreign armed groups referred to by the Nairobi joint communiqué.” While the FDLR were not parties to this agreement and could not technically violate it, since the elimination of the FDLR was tied to the demobilization of other armed groups in the *Acte* - and, in fact, it is likely that the CNDP were only brought to the table by the prospect of eliminating the FDLR - any resistance to demobilization and repatriation would clearly “threaten” the Goma process in the

²³Or perhaps higher; both are in priority f, but the peace processes are mentioned first.

²⁴African Rights, *A Welcome Expression of Intent*, pp. 84—88.

²⁵Because the FDLR’s core and leadership are made up of members of the Rwandese Armed Forces (known by the French acronym FAR) under the genocidal regime and the *interahamwe* paramilitaries that helped carry out the genocide, “ex-FAR” or “ex-Interahamwe” are sometimes used to refer to the FDLR and allied/spin-off groups such as the RUD/URUNANA.

²⁶*Acte d’Engagement*.

²⁷All translations from the French are the author’s.

meaning of MONUC's mandate.²⁸

MONUC's mandate clearly aligned it with the government of the DRC and against the FDLR. This is not necessarily a bad thing, but it is worth taking note of, because it represents a trend in UN thinking that I believe has been very influential in the development of the civilian protection discussion. Secondly, because the perspective it embodies may be the best one in some circumstances, but it constrains policy options and comes with moral costs.

MONUC's mandate seems to represent an instance of the kind of new thinking about the impartiality principle expressed in the "Brahimi Report," which is one of the foundational documents of contemporary peacekeeping: "impartiality is not the same as neutrality or equal treatment of all parties in all cases. . . In some cases, local parties consist not of moral equals but of obvious aggressors and victims, and peacekeepers may not only be operationally justified in using force but morally compelled to do so."²⁹ In fact, part of what makes Kimia II interesting is that, at first glance, it may seem like a perfect example of the new concept of impartiality. I suspect that this is why critics of Kimia II criticize its cost and not its aims. Kimia II may have been a poorly executed operation, but the basic problem from the perspective that the UN ought to take a forceful stance against the worst human rights abusers is how to undertake future Kimia-II-like operations without the human costs of this one. Thomas-Jensen (*The Counterinsurgency Debate: A Tale of Two Countries*) is particularly clear on this point — his hope is that the UN will learn from counterinsurgency doctrine, especially the clear-hold-build approach that would help protect civilians from reprisals.³⁰

This perspective may show "moral clarity," but it constrains options by taking a side in the conflict. Both the FARDC and the FDLR threatened civilians. MONUC could have treated these abuses equivalently, taking similar actions to prevent or punish them. But it would be difficult to do so under the mandate the mission was given.

The FDLR are defined as a threat to the peace by the mandate. Their abuses of civilians are further reason to *eliminate* the group - integration or accomodation, on the model offered to other rebel groups in the eastern DRC, is not an option. The Nairobi/Goma agreements and MONUC strategy did not necessarily make enemies

²⁸On elimination of the FDLR as a condition of CNDP participation, see Boshoff and Hoebeke, *Peace in the Kivus*.

²⁹Panel on United Nations Peacekeeping Operations, *Report of the Panel on United Nations Peace Operations*, §50.

³⁰One problem with Kimia II was that the FARDC drove FDLR forces out of areas but was not able to securely hold the areas and prevent militants from returning.

of *individual* FDLR members - the Nairobi agreement makes provisions for disarming and demobilizing them, and then resettling them in the DRC or repatriating them to Rwanda as appropriate. But the organization as a whole is to be eliminated, and their abuse of civilians makes the task more morally urgent.

On the other hand, the mandate makes MONUC a partner of the DRC government and thus the FARDC. Abuses by the FARDC are condemned, but are not conceived of as a reason to eliminate those forces – they are reasons for reform. Some of the critics cited suggested that the UN should have refused to support the Kimia II operation, or at least used the threat of withdrawing support to force the FDLR to behave better and prevent the involvement of known abusers.

One might reasonably ask whether there is anything wrong with this approach. The FARDC are abusers but are also the government. Taking a more “robust” stance toward the FARDC would threaten the mandate, the consent of the government necessary to the mission, and the legitimacy of the 2006 elections. At least post-2006, there is no way the UN could have contemplated an operation to coercively disarm and demobilize the FARDC - or any armed group, such as the CNDP, that had integrated with it. It is not clear how MONUC’s military could have protected civilians directly from the FARDC. Enforcing a separation between the FARDC and civilians either by creating civilian protected areas (or allowing large numbers of civilians to seek shelter with UN forces) would have been counterproductive, since the aim of the operation was not *just* to kill, capture, or disarm FDLR combatants, but to transfer areas to FARDC (and government) control. The FARDC took advantage of the close contact with and power over civilians required by this goal to abuse them, but unless MONUC were willing to deny the FARDC such control — which would amount to vetoing Kimia II by force — its ability to defend against abuses was similarly limited. It may have been possible to “embed” MONUC forces so deeply in the FARDC operation as to prevent abuses on an individualized basis — i.e., to have MONUC personnel fighting alongside and entering villages alongside FARDC, and stepping in directly when an abuse of a civilian looked likely. I could imagine such an approach working, if the resources were available to so thoroughly integrate and the trust between the government of the DRC and MONUC were absolute. But even so, note how different this would be from any approach that looked reasonable for approaching the FDLR. The FDLR, on the other hand, are not only abusers, but reject the democratically elected government and are led by participants in the 1994 Rwandan genocide.

The Image of the “Total Spoiler”

Could the UN have given even-handed support, if even-handed disengagement was not feasible — i.e., tried to engage with and reform the FDLR, as it has done with the FARDC? Practically, maybe (and only maybe), but the dominant moral perspective taken on the FDLR by both the UN and outside observers barred this approach.

In terms of Stedman’s influential typology (“Spoiler Problems in Peace Processes”), the FDLR were defined as “total spoilers.” Spoilers believe that “peace... threatens their power, worldview, and interests,” while “average citizens have the most to lose if war is renewed.” And, “[w]hen spoilers succeed... the results are catastrophic.” *Total* spoilers “pursue total power and exclusive recognition of authority and hold immutable preferences... [and] often espouse radical ideologies.” The FDLR seems to fit — they are willing to use extreme violence and subscribe to a totalizing ideology that causes them to make demands that cannot be accommodated (in particular, return of the *ex-genocidaire* leadership to political power in Rwanda). Defining the FDLR in this absolute and moralized way fits the moralized understanding of impartiality mentioned above. Total spoilers cannot be accommodated, appeased, or socialized — they must be marginalized or destroyed.³¹ The reasons for this “must” are supposed to be both practical (they won’t respond to incentives) and moral (the incentives they want are immoral to grant).

According to this picture, nothing is worse for civilians than the persistence of spoiler groups. This may seem self-evident, given the fact that spoilers (by definition) want to continue the war, but war is not an undifferentiated realm of slaughter. While the FDLR controls significant terrain in the eastern DRC, it makes sense to say that the war there is not over - but life is very different for a civilian living in an area that is under stable FDLR control than for one living in a contested area with open fighting. This is not to paint a rosy picture — at best civilians are exposed to “taxation,” random criminal violence, poor infrastructure, and the like. But it is to make the point that civilians might reasonably prefer some versions of continued war to some attempts to make peace (and not just because they share a mad ideological vision with combatants).

Secondly, it paints a demonic picture of total spoilers. Conceiving of groups as irreconcilable is common despite the way in which those images are routinely overturned - e.g., in the DRC, the FARDC collaborated with the FDLR when the CNDP was treated as the greatest threat (and a total spoiler, unwilling to compromise), and then the FARDC and the CNDP integrated (somewhat) to fight the FDLR. Preferences are rarely completely immutable. And “radical ideology” does not necessarily

³¹Stedman, “Spoiler Problems in Peace Processes”, pp. 11,15.

imply that a group cannot be compromised with, because radical ideology tends to be the province mainly of the group's elites, not of its mass membership. Secondly, even elites often seem to act in ways that reveal more motivation than single-minded obsession. After all, the leaders of the FDLR may be *genocidaires*, but they have also been getting rich and making lives in the DRC and abroad. Even if they were given all they ask in terms of an "inter-Rwandan dialogue" and a return to some political power in Rwanda, they would be unlikely to be able to "finish the job" of the 1994 genocide — but it might be a very good way to ensure that they remain rich and powerful. Finally, "radical ideology" is an unhelpful category — Western states contain many groups with what could be called "radical ideologies," without breaking: the Amish, white supremacists, anarchists, fascists, the Westboro Baptist Church, Dominionists, etc. Some of these groups even have radical ideologies that espouse violence. But their violence is controlled by the state where appropriate, and they are either integrated or marginalized in ways that minimally threaten overall social structure and governance. The problem with spoilers with radical ideologies is that they are spoilers, not that they have radical ideologies. It is at least conceivable that one could change the former without changing the latter.

Does this general reflection that "total" spoilers may not be so total entail that a "kumbaya" moment was possible or appropriate with the FDLR specifically? Of course not. It *might* have been, but making that decision would require a detailed analysis of the conflict beyond what I can give here. My concern is that the approach to the conflict, especially as reflected in MONUC's 2008 mandate, *ruled it out*. The result was to force MONUC into a position where it was highly likely to be pushed to back military operations that were inevitably going to threaten civilians. Aside from any analysis of the FDLR as totally implacable (which, given their previous alliance with the FARDC and the inclusion of other groups with similar infamy in the Goma *Acte*, seems a bit implausible), there seem to be two reasons why it might seem that eliminating the FDLR is the *only* option available. The first is dangerous, but perhaps realistic, and the second is wrong.

The first is that the integration of the CNDP militia and DRC-Rwanda reconciliation may have been contingent on a hard line toward the FDLR. The war in the DRC has always been regionalized, and Rwanda has been a major player from the start. Reconciliation between the DRC and Rwanda is probably a prerequisite for ever ending the violence. I must admit that this may be a good reason for accepting the violence against civilians sure to accompany even the best-executed approach to coercively disarming the FDLR. We should accept such a conclusion only with great regret, though — only the level of catastrophe that the violence in the DRC has been for civilians makes it plausible that accepting some additional violence in the name

of ending it would be justified. And even then, before condoning it, we should be very, very certain that it will work.

The second, and the one that seems to dominate advocacy discussions here in the US, is that the leadership of the FDLR are *genocidaires* and abusers, and forcible disarmament is the only way they will be brought to justice. Any sort of compromise or accomodation with the group is likely to end with the leaders either retiring into comfortable exile or having positions of influence in the DRC or Rwanda. This seems odious, and it is. But we should ask ourselves if the massive civilian cost of operations against the FDLR would be justified by the goal of bringing the leaders to justice. Some strict moralists might say “yes,” but I think it is hard to maintain that judgment and take the situation seriously — it is a very harsh deontology that would say to one of hundreds of civilians raped or killed during Kimia II that this is obligatory to avenge past misdeeds. In fact, it verges on behavior that would make the FARDC and MONUC “spoilers” with a “radical ideology” — an ideologically radically committed to justice, which may be noble, but radical nonetheless. If we put it starkly, and ask if we ought to be willing to countenance violence against hundreds if not thousands of civilians, so that leaders of the FDLR will get their just desserts, I think a moral logic of proportionality would say “no.” Proportionality sometimes does mean that one lets evil go unpunished because the costs of accountability are too great.

Beyond Kimia II, an asymmetric approach to civilian abuses is likely to be a feature of any “robust” peacekeeping approach, especially as they approach the border with counterinsurgency. Except in cases where the UN is willing and able to establish a transitional administration, a local state is going to be a necessary partner for any emergence from conflict.³² Once a peace process is in place, and especially if state-legitimizing political processes like elections have taken place, intervening forces (including the UN) will need, to some extent, to choose a side. The moral ideals of treating all harms to civilians equally, of being willing to respond to the most serious abuses with force (both for effect and a sense of justice), and of extending the legitimate rule of a state are not likely to all point in the same direction.

Implications for Civilian Protection

What does this all mean for MONUC, or for interventions in general?

Coercively disarming groups with stable control over a population requires phenomenal resources, especially if military assets will also be used to protect civilians

³²And transitional administrations have an uneven history See Chesterman (*You, the People*).

from reprisals and to monitor local partners. This is not just a matter of calling for more UN troops or stronger mandates. The US experience in Afghanistan and Iraq should be a cautionary example - the US has access to resources far beyond what the UN or a regional actor (such as the AU) could expect to have, especially in terms of the ratio of resources to population/geographic area to be controlled, and as fully admitted counterinsurgency missions, US (and coalition) forces have maximum permission to use force. Despite this, both efforts have dragged on years longer than initially planned for, and the US has been plagued both by confidence-undermining attacks on civilians by its enemies and by abuses by its own forces and local partners. Rather than look for ways to bring to bear perhaps unrealistic levels of resources to support a strategy of legitimizing a central government as early as practicable and then using force to back up a disarmament process for “spoilers,” we should at least consider whether that is the wrong model.

In a certain sense, the aggressive approach treats both spoilers and the government as apolitical. The government, especially a democratic one, is conceived of as basically on the side of the people but in need of some reform by non-coercive pressure where it does not live up to that ideal. Spoilers, especially total spoilers, are not really part of a political process since they have rejected peace, and peace is what the people clearly want.

A different approach would be to treat areas controlled by spoilers who provide some governance (even if not up to moral standards) seriously as small political entities, and the government’s legitimacy as a process that cannot be considered established by any fairly sharp event, like an election. Just as UN forces (and civilians) work with government forces like the FARDC to improve their respect for human rights and civil-military relations, the UN could work with spoiler militias to ensure that they extracted resources in a more humane manner and conducted their military operations with greater respect for civilians. If this seems hopelessly naïve, I am not saying that it is clearly better in all cases, or that it has no moral and practical problems. But the costs of the approach of eliminating spoilers by force are heavy, and so should at least be weighed against other heavy costs. Taking such an approach toward spoilers legitimates them to some extent. But, if they have even ambiguous and partly coerced support of civilians, they may in fact deserve some degree of cautious, limited legitimacy. “Making looting more humane” may seem like an oxymoron, but we should not place too much weight on the moral divide between looting and taxation backed with the force of law — there is a continuum here, not a sharp distinction. Integrating quasi-political units based on spoilers into a state will inevitably be difficult, and pressure should be strong to get them to rein in practices that thrive only in conflict in favor of the benefits of some kind of legitimacy. But

it is not clear *a priori* that integration on the basis of some legitimation will always be more difficult or more morally costly than forceful elimination.

For a case in point, consider the Renamo insurgency in Mozambique.³³ Renamo was a brutal group, known for the mutilation of civilians and often accused of having no political program aside from destabilizing Mozambique on behalf of Rhodesia (now Zimbabwe) and later apartheid-era South Africa. Nonetheless, it was brought into both the peace process and ultimately became a responsible partner in the post-war government, largely through UN support to its development as a political party. Granted, Renamo accepted a role in the peace process, but peace processes are not ideal forums of justice, and so that should not be a moral divide where terrible human rights abuses were not.

Two final points. First, this does not rule out a military solution; it just changes the options. If MONUC were treating the FDLR as a governing group to be accommodated and absorbed or integrated eventually, while being reformed in the nearer term, it might still engage in military operations aimed at containment or zone protection. The military priorities might be reversed however, given the dynamics of violence against civilians — rather than seeking to drive the FDLR out of its strongholds, military operations would be used to prevent attempts to expand zones of control (with the attendant incentives to abuse civilians) and to secure contested areas (probably with a bias towards securing them in the government's favor).

Second, it does require biting the bullet on accountability, to some extent. Perhaps at a future date, a stable DRC would prosecute FDLR leaders. But perhaps not. If we are willing to swallow the FARDC's quite serious abuses, I see no reason not to do the same for the FDLR, for similar reasons.³⁴

Conclusion

My argument in this essay is really fairly limited. First, I hope to have established that patterns of civilian abuse are not generally exogenous to military strategies - especially when, as in the case of the FDLR, abusers are motivated in substantial

³³See Vines, *Renamo*.

³⁴Nor is this merely a position held by academic fools like myself. I had the opportunity to discuss these issues (confidentially) with a member of MONUC's civilian political affairs staff. He told me that the UN's official policy was not to negotiate with the FDLR, but there were many in the mission who felt that the time for compromise had come. He characterized this a conflict between wanting to do the principled thing of refusing to work with *genocidaires* and practicality; I would only argue that there is principle in being willing to privilege the concrete well-being of vulnerable people over abstract justice.

part by a desire to control rather than eliminate the population. Second, that peace-keeping missions can get boxed in to strategies that threaten to change the dynamics to the cost of civilians by an overly moralized picture of the conflict - the option of working with armed factions to reform them as political military units should be taken off the table only *after* carefully assessing the likely civilian cost of eliminating them, rather than ruling it out on principle because they are abusers or “total spoilers.” In the end, the only option for the DRC and situations like it may be using military force to crush groups like the FDLR - but we should not rush into such a risky strategy out of a desire to seize the moral high ground, regardless of cost.

References

- Acte d'Engagement*. Jan. 2008. URL: <http://www.iss.co.za/uploads/KIVUACT23JAN08.PDF> (visited on 07/10/2010).
- African Rights. *A Welcome Expression of Intent: The Nairobi Communique and the Ex-FAR/Interahamwe*. Kigali, Rwanda: African Rights, 2007.
- “After Operation Kimia II: MONUC Outlines Cooperation with FARDC in Operation Amani Leo”. In: *MONUC News* 249 (Jan. 7, 2010).
- Atama, Noel. *Field Dispatch: South Kivu - No Peace in Sight*. Enough Project. Dec. 2009. URL: <http://www.enoughproject.org/publications/south-kivu-no-peace-sight> (visited on 06/14/2010).
- Boshoff, Henri and Hans Hoebek. *Peace in the Kivus? An Analysis of the Nairobi and Goma Agreements*. July 2008. URL: <http://www.iss.co.za/uploads/SITREPDR310708.PDF> (visited on 07/10/2010).
- Chesterman, Simon. *You, the People: The United Nations, Transitional Administrations, and Statebuilding*. New York, NY: Oxford UP, 2005.
- Cohen, Marc J. and Tara R. Gingerich. *Protect and Serve or Train and Equip? US Security Assistance and Protection of Civilians*. Boston, MA: Oxfam America, 2009.
- Congo Advocacy Coalition. *DR Congo: Civilian Cost of Military Operation is Unacceptable*. Nov. 2009. URL: <http://www.oxfamamerica.org/press/pressreleases/dr-congo-civilian-cost-of-military-operation-is-unacceptable> (visited on 07/21/2010).
- Gettleman, Jeffrey. “Africa’s Forever Wars”. In: *Foreign Policy* (Mar. 2010).
- Giffen, Alison. *Addressing the Doctrinal Deficit: Developing Guidance to Prevent and Respond to Widespread or Systematic Attacks Against Civilians*. Washington, DC: The Henry L. Stimson Center, 2010.

- Headquarters, Department of the Army. *Stability Operations*. Field Manual FM3-07. Washington, DC: United States Army, 2008.
- Holt, Victoria K. and Tobias C. Berkman. *The Impossible Mandate? Military Preparedness, the Responsibility to Protect, and Modern Peace Operations*. Washington, DC: The Henry L. Stimson Center, 2006.
- Holt, Victoria K., Glyn Taylor, and Max Kelly. *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks, and Remaining Challenges*. New York, NY: United Nations, 2009.
- International Crisis Group. *Congo: Bringing Peace to North Kivu*. Africa Report 133. Nairobi, Kenya and Brussels, Belgium: International Crisis Group, 2007.
- *Congo: Consolidating the Peace*. Africa Report 128. International Crisis Group, 2007.
- *Congo: Five Priorities for a Peacebuilding Strategy*. Africa Report No. 150. Nairobi, Kenya and Brussels, Belgium: International Crisis Group, 2009.
- Kalyvas, Stathis N. *The Logic of Violence in Civil War*. New York, NY: Cambridge University Press, 2006.
- Kavanagh, Michael J. “Five Million Dead and Counting”. In: *Slate* (Nov. 14, 2008).
- Life and Peace Institute. *Analyse de Dyanmiques Locales de Cohabitation Avec Groupes Armes FDLR a Bunyakiri, Hombo Nord, Hombo Sud et Chambucha*. Field Report. Life and Peace Institute, 2007.
- Mahtani, Dinesh et al. *Final Report of the Group of Experts on the Democratic Republic of the Congo*. UN Document S/2009/603. United Nations, 2009.
- *Interim Report of the Group of Experts on the Democratic Republic of the Congo*. UN Document S/2009/253. 2009.
- McCrummen, Stephanie. “For Tutsis of Eastern Congo, Protector, Exploiter or Both?” In: *Washington Post* (Aug. 6, 2007).
- “Rwanda’s Arrest of Congolese Rebel Leader Marks a Key Shift; Conflict Has Plagued Region Since 1994”. In: *Washington Post* (Jan. 24, 2009), A8.
- Nienaber, Georgianne. *Satellite Imagery Proves Catastrophic Failure of Joint Rwanda/Congo Military Exercises*. Nov. 2009. URL: http://www.huffingtonpost.com/georgianne-nienaber/satellite-imagery-proves_b_318160.html (visited on 06/14/2010).
- Olson, Camilla and Jennifer Smith. *DR Congo: Protect Civilians and End Military Operations*. Sept. 2009. URL: <http://www.refugeesinternational.org/policy/field-report/dr-congo-protect-civilians-end-military-operations> (visited on 07/21/2010).

- Panel on United Nations Peacekeeping Operations. *Report of the Panel on United Nations Peace Operations*. UN Document A/55/305 - S/2000/809. New York: United Nations, 2000.
- “Profile of DR Congo Dissident General Laurent Nkunda”. In: *BBC Worldwide Monitoring* (Sept. 6, 2007).
- Prunier, Gerard. *Africa’s World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. New York: Oxford UP, 2008.
- Report of the Secretary General on the Protection of Civilians in Armed Conflict*. UN Document S/2009/277. United Nations, 2009.
- Rodin, David. “Terrorism Without Intention”. In: *Ethics* 114 (4 2004), pp. 752–771.
- Sawyer, Ida and Anneke Van Woudenberg. *“You Will Be Punished:” Attacks on Civilians in Eastern Congo*. New York, NY: Human Rights Watch, 2009.
- Sewall, Sarah, Dwight Raymond, and Sally Chin. *Mass Atrocity Response Operations: A Military Planning Handbook*. Cambridge, MA: Harvard College, 2010.
- Slim, Hugo. *Killing Civilians: Method, Madness, and Morality in War*. New York, NY: Columbia University Press, 2008.
- Stearns, Jason. *MONUC Internal Report About ex-CNDP Killings*. Nov. 6, 2009. URL: <http://congosiasa.blogspot.com/2009/11/monuc-internal-report-about-ex-cndp.html> (visited on 07/21/2010).
- Stearns, Jason et al. *Final Report of the Group of Experts on the Democratic Republic of the Congo*. UN Document S/2008/773. 2008.
- Stedman, Stephen John. “Spoiler Problems in Peace Processes”. In: *International Security* 22.2 (1997), pp. 5–53.
- Thomas-Jensen, Colin. *The Counterinsurgency Debate: A Tale of Two Countries*. Sept. 2009. URL: http://www.huffingtonpost.com/colin-thomasjensen/the-counterinsurgency-deb_b_301649.html (visited on 06/14/2010).
- Thomas-Jensen, Colin, Noel Atama, and Olivia Caeymaex. *An Uneasy Alliance in Eastern Congo*. Enough Project. Sept. 2009. URL: http://www.enoughproject.org/publications/Uneasy-Alliance#_ednref9 (visited on 06/14/2010).
- Twenty-Seventh Report of the Secretary General on the United Nations Organization Mission in the Democratic Republic of the Congo*. UN Document S/2009/160. United Nations, 2009.
- United Nations Security Council. *Resolution 1856 (2008)*. UN Document S/RES/1856 (2008). New York, NY: United Nations, 2008.
- Vines, Alex. *Renamo: From Terrorism to Democracy in Mozambique*. New Jersey: Centre for Southern Africa Studies, 1996.
- Vircoulon, Thierry. *After MONUC, Should MONUSCO Continue to Support Congolese Military Campaigns?* International Crisis Group. July 19, 2010. URL:

<http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/vircoulon-after-MONUC-should-MONUSCO-continue-to-support-congolese-military-campaigns.aspx> (visited on 07/21/2010).

Weir, Erin A. *The Last Line of Defense: How Peacekeepers Can Better Protect Civilians*. Washington, DC: Refugees International, 2010.