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Cooperating with evil? Accountability in peace operations and the evolution of the United Nations Human Rights Due Diligence Policy

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Abstract

International organizations (IOs) usually cooperate with national actors in order to implement global decisions and policies. This cooperation has become problematic as implementing partners have increasingly been accused of serious human rights violations. This article analyzes how implementing partners from the host state of a United Nations (UN) peace operation are held accountable. I argue that the complexity of contemporary peacekeeping limits the availability of traditional accountability mechanisms. I develop a conceptual model to demonstrate how, instead, different accountability forms interact and complement each other. I illustrate this interplay of accountability with a case study on the emergence of the UN Human Rights Due Diligence Policy (HRDDP). The accountability framework enacted by the Joint Human Rights Unit, the Special Procedures of the UN Human Rights Council and the International Criminal Court in the context of the UN peace operation in the Democratic Republic of the Congo threatened the legitimacy of UN peacekeeping. As a consequence, the UN adopted the HRDDP as a new, UN-based accountability mechanism to hold implementing partners from the host state of peace operations accountable.

Keywords

accountability, human rights, legitimacy, peacekeeping, United Nations

Introduction

International organizations (IOs) have always been dependent upon national state and non-state actors to implement their policies. Peacekeeping is one of the core fields where this dependency is most obvious: to implement an operation, the United Nations relies on a close cooperation with states and private actors (Bellamy and Williams, 2013). This cooperation, however, has become increasingly problematic as national implementing

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partners have been accused of grave human rights violations (Amnesty International, 2007; Human Rights Watch, 2004, 2013). Most attention has been given to human rights abuses committed by national contingents deployed in the context of a peace operation (Hirschmann, 2017; Verdirame, 2011). However, human rights violations committed by the implementing partners of the host state of a peace operation have raised similar concerns. One of the most prominent examples is the UN mission in the Democratic Republic of Congo, MONUC or MONUSCO as it is named since July 2010, which has been strongly criticized for supporting the “Forces Armées de la République Démocratique du Congo” (FARDC), a former Congolese militia whose members have notoriously been involved in human rights abuses such as deliberate killings, sexual abuse and summary executions (Human Rights Watch, 2005). These human rights violations committed by the UN’s cooperating partners stand in stark contrast to the mandate of the peace operation adopted by the UN Security Council, which in 2008 established the protection of civilians as the highest priority for MONUC (Kjeksrud and Aasland Ravndal, 2012). This created a dilemma for the UN: while the Security Council emphasized the protection of civilians and never justified or authorized the actions that ultimately violated human rights, the implementation of the operation required that the UN through MONUC/MONUSCO provided support to human rights violators.

To address this dilemma, the UN is expected to hold its implementing partners accountable, but often fails to do so (Amnesty International, 2004; Aoi et al., 2007; Human Rights Watch, 2009a). This is partly due to the increased complexity in peace operations: often, there is no formal delegation relationship between the UN and the host state implementing partners, which implies that the host state is legally responsible for the conduct of its military contingents supported by the UN (Gill et al., 2017: ch. 19). This blurs the lines of responsibility between the different actors and thus severely limits the possibility of traditional, principal-agent-based accountability relationships (Hirschmann, 2018). At the same time, however, alternative forms of accountability have evolved, whereby other actors that are not part of the peacekeeping relationship between the UN and the host state hold the implementing partners accountable for human rights violations. Accountability is hereby enacted by regional or international courts, other international organizations, non-state actors or other sub-units of the IO (Verdirame, 2011; Wouters et al., 2010). These alternative forms of accountability have been regarded as second-best only (Rubenstein, 2007). So far, however, we know little about how different accountability forms interact, and whether they compensate, reinforce or constrain each other.

In this article, I analyze how implementing partners from the host state of a UN peace operation are held accountable given that the UN strongly depends on them for an effective implementation of the operation. I propose a conceptual model of how different accountability forms complement each other. I hereby distinguish between vertical accountability exercised by the principal(s) and pluralist accountability exercised by third parties independent of the original delegation relationship (Hirschmann, 2018). I argue that while vertical accountability might not be available at the outset, the exercise of pluralist accountability can stimulate the development of new vertical accountability mechanisms. I demonstrate that pluralist accountability can have de-legitimizing effects for the IO as it associates the organization with human rights violators and exposes its

failure in holding implementing partners accountable. This stimulates the establishment of vertical accountability mechanisms that allow the IO to redirect the blame to the implementing partners and thereby re-legitimate itself (Dai, 2002; Hood, 2002).

I illustrate this interplay of accountability with insights from a theory-guided case study on the evolution of the UN Human Rights Due Diligence Policy (United Nations Secretary-General, 2013). This policy has become an important instrument of vertical accountability for the UN. By tracing back the policy's evolution to the effects of pluralist accountability in response to human rights violations committed in the context of the UN's operation in the Congo, I demonstrate that the impact of alternative accountability mechanisms has been underestimated so far. The empirical analysis hereby relies on primary documents made publicly available by the UN or internal documents provided to the author by UN staff members. Additionally, I have conducted semi-structured interviews with the main actors involved in the development of the policy at the UN headquarters in New York.

The article is structured as follows. I first outline the different accountability frameworks and the pathway of accountability dynamics. I then examine the accountability framework that existed for the cooperation between the UN and domestic military actors in the operation in the DRC. Thereafter, I trace the evolution of the UN human rights due diligence policy back to the interplay between pluralist and vertical accountability mechanisms in response to the human rights violations committed by the Congolese army. I hereby demonstrate how standard-setting, monitoring and sanctioning by the Office of the High Commissioner for Human Rights, the Special Procedures of the UN Human Rights Council and the International Criminal Court threatened the legitimacy of UN peacekeeping and thus encouraged the UN to adopt the policy as an instrument of vertical accountability. The conclusion summarizes the findings and points to some implications that can be drawn from this case for the interplay of accountability in more general terms.

The pathway of accountability dynamics and IO legitimacy

Accountability has become a buzzword in current research, with different researchers using different conceptualizations (Bovens, 2007; Grant and Keohane, 2005; Scholte, 2011). In line with existing literature, accountability is defined in this article as *the relationship between two actors by which one actor (the accountability holder) sets the standards for the other actor's behavior, and monitors and sanctions the other (the accountant) if its actions deviate from the standards* (Bovens, 2007; Buchanan and Keohane, 2006; Grant and Keohane, 2005; Koenig-Archibugi, 2004). Standard-setting implies that the accountability holder prescribes the norms that the implementing actor should be respecting in the course of implementing a task. Monitoring defines mechanisms of oversight, such as self-reporting or spontaneous on-site visits, that make transparent whether the implementing actor complies with these standards (Hawkins et al., 2006; Heldt, 2017). Sanctioning involves normative-political or material consequences that are imposed by the accountability holder if the implementing actor does not comply (De Wet, 2008; Macdonald and Macdonald, 2006; Pollack, 1997).

Depending on who exercises these three functions of standard-setting, monitoring and sanctioning, I distinguish between two different types of accountability, namely vertical



Figure 1. Pathway of accountability dynamics.

and pluralist accountability (Hirschmann, 2018). Vertical accountability characterizes all forms in which the accountability holder is part of the original delegation relationship (Grigorescu, 2008; Keohane, 2003; Krisch, 2010; Risse, 2008). In this accountability type, which has also been called internal accountability, the implementing actor is held accountable directly by its mandating authority. In principal-agent terms, the principal acts as the accountability holder, defines standards for implementation, monitors the implementing actor and sanctions misbehavior by normative shaming, revising the mandate or ultimately by withdrawing the mandate. By contrast, pluralist accountability is characterized by third parties who exercise accountability functions on their own initiative, independent of the principal-agent relationship between the mandating authority and the implementing actors. These third parties thus act outside of the original delegation relationship, such as other international organizations, other sub-entities of the delegating organization, non-governmental organizations or national or international courts.

While vertical accountability is generally considered to be more effective or even more legitimate, alternative forms of accountability have been regarded as a second-best option only (Agné, 2016; Rubenstein, 2007). However, so far we know little about the potential interaction dynamics between different accountability types. Do they complement, reinforce or perhaps even constrain each other? This article argues that pluralist accountability can actually enhance the development of vertical accountability mechanisms and thereby has a much more significant effect than expected by existing literature so far. To conceptualize the interaction between pluralist and vertical accountability, I propose a *pathway of accountability dynamics* (Figure 1).

In this pathway, pluralist accountability exercised by third parties – paradoxically – causes a decrease in the IO’s legitimacy. By setting standards, monitoring the implementation and sanctioning misbehavior, third parties reveal how the cooperation between the IO and the implementing actors contributed to the rights violations. By exposing the IO’s association with the perpetrators and its failure to enact vertical accountability vis-à-vis its cooperating partners, pluralist accountability thus threatens the IO’s legitimacy. This has been identified as a core scope condition for institutional accountability mechanisms in response to human rights violations committed by an IO’s own staff (Heupel et al., 2018; Hirschmann, 2017). I take this argument further and demonstrate in this article that similar dynamics are at work when human rights violations are committed by the IO’s cooperating partners. In order to regain legitimacy, the IO establishes vertical accountability mechanisms to distance itself from the human rights violations and redirect the blame to the implementing actors (Hood, 2002). Vertical accountability hereby becomes a means for the IO to clearly identify the implementing actor as the perpetrator that has to take the blame for not complying with core standards (Dai, 2002). The extent to which pluralist accountability threatens

an IO's legitimacy in the eyes of the international community and its own staff members thus influences the evolution of vertical accountability.¹

I illustrate this argument in the following section with a theory-guided case study on the emergence of the UN Human Rights Due Diligence Policy. Theory-guided case studies have been regarded as particularly useful for explaining a single empirical phenomenon (Levy, 2008). The purpose of this article is thus to illustrate how the pathway of accountability dynamics works in the context of UN peace operations. So far, we know little about how the origins of the HRDDP and how its emergence can be explained (Aust, 2015; Rhoads, 2016). This article therefore sheds light on the evolution of this policy by examining the accountability dynamics and their impact on the UN's legitimacy in the context of the UN's mission to the Democratic Republic of the Congo (DRC).

Cooperating with evil? The UN's cooperation with the FARDC in the context of MONUC/MONUSCO

The UN mission in the DRC – MONUC, since 2010 MONUSCO – has become by far the largest peacekeeping mission ever. More than 20,000 military and civilian personnel are deployed in a country larger than Western Europe, a majority stationed in Eastern Congo. Due to the challenging realities on the ground, the UN decided to rely on Congolese actors to implement certain aspects of MONUC's mandate (United Nations, 2004: 3). While the mandate for the operation was provided by the UN Security Council, the Secretariat and the mission leadership – the Secretary-General's executive arm with “command in the field” – decided about the concrete support to the implementing partners (Sheeran, 2011: 58, 99). The central implementing partner on the ground became the “Forces Armées de la République Démocratique du Congo” (FARDC), who were – under the direction of the Congolese government – responsible for the disarmament and the demobilization of former combatants as well as for the fight against armed groups in Eastern Congo. The Security Council had authorized MONUSCO to “carry out targeted offensive operations [...] either unilaterally or jointly with the FARDC” (Aust, 2015: 62). MONUSCO and FARDC then undertook several joint operations against rebels in the Kivu region, named operations *Kimia I* and *Kimia II*, in which MONUSCO provided logistical, financial and operational support to the FARDC troops, such as intelligence, fire support, air strikes, transportation, patrolling and the supply of daily allowances for 16,000 army personnel (Human Rights Watch, 2009b). This extensive material and financial support to the FARDC shows that MONUSCO was relying heavily on the FARDC to disarm rebel groups in the Eastern Congo, as foreseen in the mandate of the operation.

This cooperation between the UN and the FARDC became crucial for the question of how implementing partners of international organizations are held accountable for human rights violations. As it turned out, a significant number of FARDC members were former rebels that had committed serious human rights violations before joining the FARDC (Human Rights Watch, 2004, 2005). Even more importantly, FARDC units supported by MONUC/MONUSCO were accused of serious human rights violations in their operations on a daily basis, including numerous cases of arbitrary execution, rape, torture and other cruel, inhumane and degrading treatment (United Nations Secretary-General, 2007). Given the important role of the UN's support to these actors, the question of how

the perpetrators were held accountable became extremely important, also in light of other UN operations relying on similar local arrangements.

From the perspective of vertical accountability, the implementing FARDC units accused of human rights violations would be held accountable by the Congolese government. Vertical accountability by the Congolese government, however, remained limited. Seven FARDC officers, who were part of a group that raped over 200 women in the Equateur province, were sentenced to life imprisonment for crimes against humanity by a military tribunal, but escaped from prison without further consequences (United Nations Security Council, 2010: 13). In 2006, the Congolese parliament passed a law on the Suppression of Sexual Violence meant to enhance the prosecution of perpetrators (Davis and Hayner, 2009). In practice, however, the government did not demonstrate convincing efforts to prosecute these serious crimes, particularly when they were committed by government forces (Lake, 2014).

The accountability framework that could be enacted by the UN in response to human rights violations committed in the context of these joint operations was also rather limited at the outset of the UN's support to the Congolese army. This is partly due to the fact that the UN was careful not to alienate the Congolese government, which was very wary about its sovereignty and showed limited willingness to consent to activities undertaken by the international community on its territory (Sebastián and Gorur, 2018: 25, 33). The Department of Peacekeeping Operations (DPKO) within the Secretariat had published a new policy guideline for peace operations, the Capstone Doctrine, in which it determined that "all United Nations entities have a responsibility to ensure that human rights are promoted and protected by and within their field operations" (United Nations, 2008: 27). Yet the resolutions that mandated MONUC to support Congolese troops did not mention any standards for how the UN should react when human rights were violated by national implementing partners. Moreover, the limited resources made it difficult for the mission to operate as an accountability holder on the ground. MONUC and the UN Secretariat often were not included in operational planning and had little information let alone control over where its support actually went and how it was used (Human Rights Watch, 2009b).

The interplay of accountability and the evolution of the UN Human Rights Due Diligence Policy

While vertical accountability was lacking, several actors started exercising pluralist accountability in response to the human rights violations by members of the FARDC. The three core accountability holders were the Office of the High Commissioner for Human Rights (OHCHR) and the Special Procedures of the UN Human Rights Council, as well as the International Criminal Court (ICC). While each was focusing on specific aspects of standard-setting, monitoring and sanctioning, together they contributed to the emergence of a pluralist accountability framework. This put the legitimacy of the UN mission in the DRC under further strain and prompted the UN to develop the Human Rights Due Diligence Policy as a vertical accountability mechanism to regain legitimacy.

The Human Rights Due Diligence Policy (HRDDP) was developed under the direction of the UN Secretariat to outline human rights standards for the UN's cooperation with national security actors and to have a means for monitoring and sanctioning at hand

(Aust, 2015). It was originally designed by the Secretariat in 2009 as a conditionality policy for MONUC's support to the Congolese armed forces and was expanded to all UN cooperation with national security actors in 2011 (United Nations Secretary-General, 2013). As we will see below, the driving actor behind the development of this policy was the UN Secretariat in a close interplay with MONUC's Joint Human Rights Office. The two main actors within the Secretariat were the Department of Peacekeeping Operations (DPKO) and the Office of Legal Affairs (OLA). The Security Council provided a normative environment conducive to the development of the policy and incorporated the conditionality policy in 2009 and the HRDDP in 2013 into its resolutions on MONUC/MONUSCO (United Nations Security Council, 2009, 2013).

The de-legitimizing effect of pluralist accountability: the International Criminal Court's investigations as a threat to the legitimacy of UN peacekeeping

The Democratic Republic of the Congo was the first state to refer a situation on its territory to the International Criminal Court (ICC) for investigation.² Most relevant for MONUC was the case against Bosco Ntaganda, the former rebel group leader who became a general within an integrated unit of Congolese army that received support from MONUC. The ICC charged Ntaganda for war crimes and crimes against humanity, such as the recruitment of child soldiers, attacks against civilians and rape. The arrest warrant had been issued in 2006 and was unsealed to the public in April 2008.³ This pluralist accountability exercised by the ICC put the legitimacy of the cooperation between MONUC and the FARDC under serious strain. In 2009, Ntaganda concluded an agreement with the FARDC that his combatants became immediately integrated into the Congolese Army (United Nations Secretary-General, 2009a).

This "planted a time bomb in all of this, which ultimately came to be a factor. After Bosco Ntaganda became a general in the Congolese army, the attention of everybody in the international human rights community went immediately to that. There was a drum beat of organizations like International Crisis Group, Human Rights Watch in particular, Amnesty International, and the International Rescue Committee, that essentially criticized the UN for working with the FARDC because here in the midst of FARDC was Bosco who was an ICC-indicted abuser of human rights. That had added of course pressure on the Secretariat" (Interview 1).

As a consequence, even if the blame was not yet associated with the UN, the Secretariat started to realize during 2008 that it risked a crisis of legitimacy if support continued as before, given that this would disrespect the decision of the ICC. The point of departure for developing the MONUC conditionality policy was the growing awareness within the UN Secretariat that MONUC's support of FARDC troops essentially implied supporting human rights violators and thus was acting contrary to the Charter and contrary to customary international law and treaty law (Interview 1). As a consequence, DPKO staff sought advice about the legal constraints for MONUC's authority from experts at the Office of Legal Affairs in October 2008 (Interview 2).

But the Secretariat still hesitated to enact accountability. MONUC continued to provide support to the FARDC continued despite the fact that external accountability holders had already monitored and sanctioned the behavior of the Congolese army. When *operation Kimia II* was launched with MONUC support in March 2009 with the aim of disarming the rebels from the “Forces Démocratiques de Libération du Rwanda” (FDLR) in Eastern Congo, UN DPKO staff again sought advice from the legal office on the mission’s support of the operation and the use of force. “The mission and DPKO headquarters consulted with the legal office on what exactly the Security Council’s intent was and what the legal and other implications of SC Resolution 1856 were on our operating with the Congolese armed forces” (Interview 1). These repeated requests started to worry the experts in the legal office, who outlined the legal implications and clear conditions for the support of the Congolese army in another memo in April 2009 (Interview 2). The memo stated that “MONUC cannot participate in any form of joint operation with FARDC units, or support an operation by those units, if there are substantial grounds for believing there to be a real risk of them violating international humanitarian law, human rights law or refugee law in the course of the operation” (Human Rights Watch, 2009b: 139). It especially warned that support of any operations in which Bosco Ntaganda participated should be suspended.

The MONUC conditionality policy: redirecting the blame

The Secretariat recognized the danger that the attribution of blame implied for the legitimacy of UN peace operations: “According to the guidance of OLA, it was clear that we were at risk of being associated with human rights violators if we did not ensure that we were not aiding people who had been guilty of grave human rights violations” (Interview 1). The concern to have associated MONUC with human rights violators eventually prompted the DPKO and the legal office to jointly develop a framework that outlined the conditions for MONUC’s provision of support to the Congolese army: “a policy paper on conditionality, which was meant to provide guidelines for what support we would provide and under what conditions we would provide support and under what circumstances we would not” (Interview 1). The guidelines were discussed and endorsed in June 2009 by the Secretary-General’s Policy Committee, the highest policy-making body within the Secretariat (Human Rights Watch, 2009b: 139). With this document, the Secretariat for the first time explicitly established official standards regarding the cooperation between MONUC and the Congolese army in light of the UN’s own legal obligations under international human rights law, humanitarian law, refugee law and the UN Charter.⁴

However, in order to not alienate the Security Council, who had mandated MONUC’s provision of support to the FARDC, the Secretariat pursued a two-fold strategy. When the time came to promulgate the policy, the UN Secretariat consciously decided “not to do this with a lot of fanfare and to do it in a very low-key way” instead (Interview 1). Member states were advised by *note verbale* at the headquarters in NY and Geneva on the Secretary-General’s decision on this policy. The note provided a general outline and offered copies of the policy on demand. The policy itself was not officially published as a UN document. The second strategy was to place the policy in the UN’s existing legal framework. “There was no attempt to hide it, but there was no attempt to push it either,

in part because we didn't want to create a backlash against it on the part of member states and make people think that this is something new and revolutionary. It's really nothing new and revolutionary, it doesn't place any new requirements or obligations on states, it articulates the Secretariat's view of its own obligations" (Interview 1).

Even if these strategies helped to avoid opposition from Security Council members, the implementation of this policy nevertheless faced several hurdles. MONUC's leadership strongly opposed any vertical accountability. The SRSG still defended MONUC's support to Kimia II by arguing that there was no alternative and warned that the conditionality policy as an instrument of direct accountability would hinder the overall effectiveness of the operation (Doss, 2009). Still in November 2009, an internal document pointed to the "sovereign decision" of the Congolese government to conduct disarmament operations (Human Rights Watch, 2009b: 138). It basically outlined that MONUC had no choice other than to support these operations if it did not want to risk unravelling the peace process. The initial reaction of the Congolese army indeed also strongly rejected the conditionality policy. "The Congolese considered the policy to compromise their operational security and their operational confidentiality. They also felt that this process by which the screening of commanders, of units, was done was too time consuming and essentially deprived Congolese forces of the element of surprise or the element of operational speed in carrying out operations against armed groups" (Interview 1). Given this opposition, the role of MONUC's Joint Human Rights Office (JHRO) as an independent accountability holder became important.

The strategy of the Joint Human Rights Office: aligning pluralist with vertical accountability

The Joint Human Rights Office, which was established in 2008, is an integrated human rights unit within MONUC but with a rather independent standing with a separate human rights mandate by the High Commissioner for Human Rights (OHCHR) and a dual reporting line that connected the office to the OHCHR in Geneva (Mahoney and Nash, 2012; Månsson, 2007). Its main mandate was to monitor human rights violations with regard to rebel groups and militias but also regarding the human rights violations committed by Congolese state actors, the FARDC or the Congolese police units. In its reports, the JHRO revealed the large-scale pillage, arbitrary killings and sexual violence committed by members of the FARDC "against the very people they were supposed to be protecting" in 2008 and between 2011 and 2012 in particular (UN JHRO, 2009a, 2009b). The office reported to the UN OHCHR and to the Independent Expert on the situation of human rights in the DRC, who had been appointed by the UN Human Rights Council in 2004. It further provided important information to a group of experts mandated by the UN Security Council in 2004 and a group of seven independent experts of the Special Procedures mandated by the UN Human Rights Council in 2008 (UN Security Council, 2007).

Within MONUC's leadership, the concerns voiced internally on several occasions by the JHRO about the human rights impact of the operations conducted by the Congolese army, were mostly ignored (Human Rights Watch, 2009b). The JHRO then leaked the advice of the UN Office of Legal Affairs about the conditions for MONUC's provision of support to the Congolese army to the international press in order to increase the pressure on

the mission leadership to accept the policy (Interview 2). It further submitted a list of FARDC commanders to the mission leadership that were asked to be removed given their record of previous human rights abuses (Human Rights Watch, 2009b). Together with the Office of Legal Affairs, the JHRO also developed a strategy for how to promote the conditionality policy within the Congolese army by aligning it to the policy of zero-tolerance with regard to human rights violations that had been issued by the Congolese president Kabila for members of the FARDC in July 2009. With this policy, the government had introduced clear and binding accountability standards that were applicable to the Congolese army, which slowly changed the rhetoric of Congolese officials:

The public discourse of Congolese commanders changed, they too began at least to talk the talk about fighting impunity and holding commanders and troops accountable for violations. Ultimately the mission did provide quite a lot of assistance in the form of joint inspection teams or in the support to the military magistrates in pursuing cases. In that sense, the conditionality policy was a point of departure that opened up various areas of – for one of the better terms – cooperation between the mission and military justice and Congolese authorities in terms of going after those that were accuse of violations, or at least doing something to pursue violators. (Interview 1)

Sanctioning was increasingly undertaken on the national level as several FARDC members were sentenced to prison or to death for murder, rape or arbitrary arrest by domestic courts (United Nations Secretary-General, 2010; United Nations News Centre, 2011). Thus, by mid-2009 the implementing partners were confronted with comprehensive human rights standards, monitoring and sanctioning procedures.

The de-legitimizing effects of continuing pluralist accountability

External monitoring activities continued with reporting by the Special Procedures of the UN Human Rights Council and had further de-legitimizing effects for the UN mission. Concerned by a report by the Special Rapporteur on violence against women, which criticized the integration of former rebel group commanders into high ranks of the Congolese Army, the Human Rights Council mandated all seven thematic Special Procedures to send independent experts to the DRC in order to examine the situation (United Nations Human Rights Council, 2008).⁵ The Special Rapporteur on extrajudicial, summary, or arbitrary executions, Philip Alston, revealed the involvement of FARDC members in the Lukweti massacre in the Kivu region (United Nations Human Rights Council, 2010). The report indicates that external accountability holders started to attribute the blame for human rights violations also to the UN Security Council who mandated MONUC's support. The Special Rapporteur argued that "the UN may be considered to have 'complicity' for abuses" (Sheeran, 2011: 57) and that the Security Council should prioritize the protection of civilians and adopt the conditionality policy as a mandatory accountability framework for MONUC's mandate:

As the UN Security Council considers renewing the mandate of the UN peacekeeping force in the Democratic Republic of the Congo (MONUC), it should ensure that no further support is given to

Congolese military operations commanded by individuals who have committed grave human rights abuses. [...] Strong conditionality, especially with respect to the removal of war criminal commanders from Congolese army leadership positions, must underpin MONUC support for military operations. (United Nations Special Rapporteur on Extrajudicial Executions, 2009)

Through these reports, the information about human rights violations was made available to the Human Rights Council and the wider international public. Major international newspapers started criticizing the UN's support to operation *Kimia II*, which indicated that the international public had grown sensitive to the issue (e.g. Ensler, 2009). In 2009, there were 16 articles in the *New York Times*, the *Washington Post* and the *Guardian* which dealt with the UN's role in *operation Kimia II*, compared to only one article in the same journals in 2008. The continued reporting associated the human rights violations committed by FARDC members with MONUC's mandate and ultimately the UN as a whole. Through naming and shaming, these reports alleged the UN to be complicit in human rights violations that stood in stark contrast to the organization's core intention to protect civilians (Human Rights Watch, 2009a, 2009b).

Vertical sanctioning through the UN Secretary-General to restore legitimacy

While the UN Secretariat had previously been concerned primarily with questions of legal attribution, the public international discourse made it no longer possible for the organization to distinguish the actions of the Congolese army from MONUC's mandate and operational strategies. Being aware of the consequences that the continued provision of support to the Congolese army would have for MONUC's legitimacy, the UN Secretariat went further and engaged in vertical monitoring and sanctioning. Based on the information provided by external accountability holders such as the Special Rapporteur and the UN Group of Experts' report on the involvement of FARDC members in the Lukweti massacre, the Secretary-General eventually decided to withdraw MONUC's support to the FARDC brigade alleged of having committed arbitrary killings in the Kivu region (Human Rights Watch, 2009b; United Nations Secretary-General, 2009b). This has been identified as a "constitutional moment", by which the Secretary-General acted as a reviewer of the Security Council's authorization and decided to hold the implementing partners accountable for their human rights violations (Sheeran, 2011: 106, 127). This sanctioning dimension was a key part foreseen in the conditionality policy, which required the UN entities concerned to engage with the respective national authorities. If action against units responsible for human rights violations or for unlawful actions against civilians was not taken, then any support was to be withdrawn (Interview 1).

The Secretariat proceeded to implement the policy, even if this caused some eruptions on the Congolese side. Further cases of sanctioning included the withdrawal of support from the 221 brigade that had been accused of the sexual abuse of women and girls. In addition, the UN withdrew its support to a police unit which was found to have violated human rights while dealing with the outbreak of the violence that broke out in 2009/2010 in the Equateur province (Interview 1). By withdrawing the UN's support to these units,

the UN Secretariat acted as the sanctioning authority and enhanced the accountability framework on the basis of the conditionality policy.⁶ This demonstrated that UN peacekeeping had “two legal masters”, with the Secretary-General as a “constitutional mechanism of checks and balances for the Security Council”, thereby ensuring an additional layer of accountability (Sheeran, 2011: 135).

The strongest instrument of sanctioning foreseen by the conditionality policy would have been to completely withdraw the UN’s support to the Congolese army. In their advice on the draft conditionality on 12 October 2009, the experts of the UN’s Office of Legal Advice stated that “[i]f MONUC is required to cease its participation in a FARDC-led operation for the reasons under contemplation, then, MONUC must therefore also cease to provide any of the FARDC units involved in that operation” (Human Rights Watch, 2009b: 141). Although this was urgently demanded by non-governmental human rights organizations, the complete withdrawal of support was never enacted. Instead, the MONUC leadership replaced operation *Kimia II* by another joint operation called *Armani Leo* in January 2010. Nevertheless, all subsequent operations had to be conducted in accordance with the Congolese zero-tolerance policy of 2009 and MONUC’s conditionality policy (United Nations Security Council, 2010).

The development of the Human Rights Due Diligence Policy

The new joint operation *Armani Leo* was accompanied by elaborated monitoring procedures that were established by MONUC as a means of collecting and analyzing information about potential human rights abusers. The Secretary-General’s policy committee had reviewed the situation in the DRC several times during the years 2008–2009 and came to the understanding that the policy needed to be fully implemented and accompanied by credible monitoring. As there were different understandings between the Secretariat and the mission leadership about the importance of this policy, the Secretariat decided to mandate an interdepartmental review team with overseeing the implementation of the policy by MONUC on the ground.⁷ By the time the Security Council adopted resolution 1906, which incorporated the conditionality policy, force commanders were required to certify that all plans had been made in order to protect civilians and ensure that these basic tenets of international law were respected (Interview 1). Additionally, the Joint Human Rights Office started the Profiling Project to identify the worst human rights abusers among FARDC commanders. “This really gave MONUC an advantage in terms of having at least a reasonable amount of credible information about the actions of different kinds of groups in Eastern Congo. So the mission really looked at its support to the FARDC through the prism of protection of civilians” (Interview 1). The conditionality policy was thus complemented by a system of vertical monitoring.

The Security Council accepted the MONUC conditionality policy in its resolution 1906 of December 2009 and requested the Secretary-General to install some instruments for implementation and review (Sheeran, 2011; United Nations Security Council, 2009). The report of the interdepartmental review team became the basis for the Secretariat’s decision in September 2010 that there should be an overall UN policy on providing support to any non-UN security institution, not just in the context of

peacekeeping (Interview 1). This was the birth of the Human Rights Due Diligence Policy (HRDDP), which set the conditions under which UN entities provide support. It outlined the modalities for the cooperation with the host governments in order to determine who the UN can work with based on the existing human rights principles outlined in the Charter and the international legal instruments. Thus, the HRDDP became the new standard for the cooperation between UN entities and national actors. It is applicable to all kinds of national armed forces, police forces or the civilian institutions that oversee those forces, such as ministries of interior or defense that oversee a police force, border guards, or armed military forces. It is, however, not applicable to private actors, such as private military and security companies (Pingeot, 2012). The interdepartmental review group still acts as a monitoring body and recently reviewed the implementation of the policy and its application to the UN's support of regional organizations, such as the operation of the African Union in Somalia, AMISOM (United Nations, 2015).

Conclusion

The UN's operations in the Democratic Republic of Congo have become a case in point for the implications of the cooperation between international organizations and national actors. The UN decided to cooperate with the Congolese army to disarm and re-integrate former combatants in particular in the Eastern Congo. Many of these actors supported by the UN, however, had and have been committing serious human rights violations such as sexual abuse and mass killings. The question of accountability thus became of utmost relevance, not only for the UN's operation in the DRC but also for other operations that supported partners who had been violating human rights.⁸ This article has introduced the distinction between vertical and pluralist accountability and has illustrated how these two types of accountability can complement each other.

The analysis has demonstrated how an important instrument of vertical accountability, the UN Human Rights Due Diligence Policy, evolved in response to pluralist accountability. Initially, the UN denied any association with the alleged human rights violators and tried to redirect the blame to the implementing partner on the ground. This blame avoidance strategy, however, proved untenable for the UN Secretariat once the practice that ultimately violated human rights became directly associated with MONUC's mandate to support the alleged perpetrators. Normative pressure increased after the ICC's indictment against Bosco Ntaganda had been unsealed. In particular, the report of the Special Rapporteur – which for the first time openly acknowledged the relationship between MONUC's mandate and the human rights violations committed in the context of joint operations – as well as press and NGO reporting on MONUC's support to the FARDC increased the pressure on the UN. Facing a legitimacy crisis, the UN Secretariat realized that blame could no longer be redirected. In order to restore the organization's legitimacy, it supported the development of a conditionality policy for the operation in the Congo. This policy became the foundation for the Human Rights Due Diligence Policy, an instrument to hold national cooperating security partners accountable for human rights violations. By analyzing the evolution of this policy, this article has demonstrated how pluralist accountability, by threatening an IO's legitimacy, can result in increased vertical accountability.

Three conclusions can be drawn from the analysis of accountability dynamics in peace operations. The first concerns the institutional relationship of pluralist accountability holders. As the analysis has revealed, third parties can become accountability holders even if they are formally part of the institutional structure of an operation. The Joint Human Rights Office in this case was officially part of the operation's institutional structure but *de facto* independent through their close relationship to their external mandate-givers. The UN's increasing tendency to integrate human rights components into the institutional framework of a peacekeeping operation has generated the – in some cases well-founded – fear that human rights would be further marginalized in the operation's activities (e.g. Howland, 2006; Månsson, 2006). Also within MONUSCO, there were attempts to marginalize the work of the human rights component (Mahoney and Nash, 2012: 16). The effort of the Joint Human Rights Office to act as an accountability holder and to support the experts of the Special Procedures as accountability holders constitutes an important example of the importance of a strong human rights component for accountability in peace operations.

The second conclusion that can be drawn from this study is that pluralist accountability emerged even in cases where the implementing tasks were delegated to sovereign actors. The results thus show that sovereignty concerns do not preclude the development of pluralist accountability. This is an important insight for the study of complex global governance arrangements, where international organizations cooperate with national implementing partners on the ground that emphasize their sovereignty.

Finally, against the background of the potential emergence of Global Administrative Law, the HRDDP can be considered an important step forward in promoting compliance with core human rights principles in global security governance (Kingsbury and Casini, 2009). Members of the UN Secretariat emphasize that the HRDDP is nothing revolutionary as it is supposedly not new that the UN should be bound by international humanitarian law, human rights law and refugee law; from an international law perspective it is indeed nothing new (Aust, 2015). However, the disapproving reactions from the MONUC leadership indicate that the recognition of these obligations by the UN itself is nevertheless something rather novel. The development of the HRDDP therefore can be regarded as a significant means of vertical accountability, through which the UN Secretariat engaged in monitoring and sanctioning the implementing partners.

It is important to note, however, that institutionalized vertical accountability does not necessarily lead to effective human rights protection. The current scope of the HRDDP is limited to the UN's cooperation with national security institutions only, although the UN is beginning to apply it also to its provision of support to regional organizations such as the African Union (Center for International Peace Operations, 2014). Moreover, sexual violence is far too widespread in the DRC for the UN's conditionality to make a tangible difference, leaving aside the human rights attitudes of a number of peacekeepers (Autesserre, 2010). To what extent the HRDDP actually improved the respect for human rights within the Congolese army or other implementing partners of the UN therefore is still too early to say and remains outside the scope of this analysis. Nevertheless, it can be regarded as an important sign that the UN has become aware of its responsibility as a vertical accountability holder when cooperating with national implementing partners.

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Notes

1. For the argument that IO staff members constitute a legitimacy community, see Gronau and Schmidtke (2016).
2. See International Criminal Court (2017).
3. Ntaganda eventually surrendered himself to the court in March 2013 and the ICC is expected to issue a decision concluding his trial any time soon.
4. Document on file with the author.
5. See the statement of the Special Rapporteur of the United Nations Human Rights Council on violence against women, its causes and consequences, available at: <https://reliefweb.int/report/democratic-republic-congo/un-expert-violence-against-women-expresses-serious-concerns> (accessed 5 May 2018).
6. Officially, MONUC has been authorized by the Security Council to “withdraw support from these FARDC units”, e.g. the units alleged of human rights violations (United Nations Security Council, 2009: 6).
7. The Special Representative of the Secretary-General, Alan Doss, referred on several occasions to the trade-off between the respect for human rights and the operational necessities in the implementation of a robust peace operation (Sheeran, 2011: 132). See also his briefings to the UN Security Council on 9 April 2009 (UN doc. SC/9631) and on 16 December 2009 (UN doc. SC/9820).
8. Similar allegations, for example, were raised against the UN mission in the Central African Republic (MISCA) (Human Rights Watch, 2013).

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