



- UNESCO Chair on
- Education for Human Rights,
- Democracy and Peace,
- Aristotle University of Thessaloniki

Aristotle University of Thessaloniki  
European Master's Degree in Human Rights and Democratisation  
Academic Year 2019/2020

“When the Protector becomes the Perpetrator”  
Accountability for human rights violations by UN  
peacekeepers

Author: Yvonne Marinze  
Supervisor: Dr. Vassilis Pergantis

## ABSTRACT

*“There are currently thirteen United Nations peacekeeping operations around the globe. These missions are established to assist countries affected by conflict and internal instability by providing support and guidance when transitioning from conflict to peace. The mandates of peace operations have expanded enormously over the decades and today peacekeepers have the task of protecting the local population, upholding human rights while simultaneously providing peacebuilding support. However, peacekeeping operations, unfortunately, do not only comprise of positive outcomes but most often entails various noxious consequences such as sexual exploitation and abuse (SEA).*

*In 2013, a UN investigation into peace operations revealed that SEA by peacekeepers has the most deleterious effect on UN peacekeeping missions. Despite the Secretary-Generals' Bulletin on zero tolerance of sexual exploitation and abuse by peacekeepers, SEA by interveners has become pervasive in peace operations ranging from pornography to transactional sex, sex trafficking and even raping at gunpoint. The trauma of sexual violence and violations of human rights during a conflict is already by itself horrible and challenging to maintain. Thus, when peacekeepers who ought to be the protectors turn around to be the perpetrators of horrendous human rights violations against the most vulnerable people; these acts are deemed more treacherous than ever.”*

## ACKNOWLEDGMENT

The writing of this thesis has been an exciting and highly enlightening experience. I am pleased to have been able to immerse myself in the problems relating to the criminal misconduct by UN peacekeeping personnel and gain extensive knowledge from it. The completion of this thesis would not have been possible without the endless help and support from several people.

First and foremost, I would like to express my sincere appreciation to my supervisor Dr. Vasilis Pergantis for his thorough support and guidance throughout the writing process. Most importantly, I would like to thank him for his selflessness, efficiency, time and flexibility to primarily communicate via skype and emails even during his non-working hours. I am very grateful to have had him as my supervisor.

I also want to thank my family and friends for their support and encouragement over the past few months. I am very grateful to have such great family and friends who kept on pushing me through the overwhelming times to achieve this milestone.

Also, I would like to thank all those I was able to interview and question, without you all, my analysis would have been lacking. Thank you for helping me to write in your field of expertise.

Finally, I would like to say a special thanks to all my fellow EMA students. Through our days of acqua alta in Venice to an entire World pandemic, the one-year master program would not have been the same without all of you. I enjoyed every minute and experience of it because of you all.

## TABLE OF CONTENTS

---

ABSTRACT.....	i
ACKNOWLEDGMENT.....	ii
TABLE OF CONTENTS.....	iii
LIST OF ACRONYMS AND ABBREVIATIONS.....	v
INTRODUCTION.....	1
I.    LEGAL FRAMEWORK OF PEACEKEEPING OPERATIONS.....	4
1. Peacekeeping Operations.....	5
1.1 The inception of United Nations peacekeeping.....	5
1.2 SEA allegations in relations to the four generations of peacekeeping.....	6
2. Rules Governing Peacekeeping Operations.....	10
2.1 Categories of UN Peacekeeping Personnel.....	11
2.2 Troop-contributing and police-contributing countries.....	12
3. Formal Agreements with Member States.....	15
3.1 Status of Forces Agreement (SOFA).....	16
a) Exclusive jurisdiction of TCC.....	16
b) Absence of a SOFA between the host state and the UN.....	18
3.2 Memorandum of Understanding (MoU).....	23
a) Introduction.....	23
b) The 2007 revised MoU.....	24
c) Conclusion.....	26
II.    CRIMINAL MISCONDUCT.....	28
1. What is to be understood as criminal misconduct.....	28
1.1 Underreporting of incidents.....	34
1.2 Why is criminal conduct of UN peacekeeping personnel so disturbing.....	37
2. Contributing Factors.....	38
2.1 Conditions of the host state.....	39
2.2 Externalized norms by peacekeepers.....	40

III.	HOLDING MILITARY PEACEKEEPERS ACCOUNTABLE.....	47
1.	Host State Jurisdiction.....	47
1.1	Waiver of jurisdiction.....	48
1.2	Rationale of immunity from host state jurisdiction.....	48
2.	Exclusive Jurisdiction of the TCC.....	51
3.	Possible Problems for Exercising Jurisdiction.....	53
3.1	Unwillingness from TCC.....	53
3.2	Evidence.....	54
4.	International Humanitarian Law.....	55
4.1	Scope of IHL.....	55
4.2	Application of IHL to UN peacekeeping personnel.....	56
a)	To what extent can IHL apply to the conduct of military peacekeepers?.....	57
4.3	Conclusion to the application of IHL.....	58
IV.	HOW THE UN ADDRESSES ALLEGATIONS OF CRIMINAL MISCONDUCT BY MILITARY PEACEKEEPING PERSONNEL.....	59
1.	The Approach of the United Nations.....	59
1.1	Standards of conduct.....	59
2.	Strategy to Eliminate SEA.....	60
2.1	Prevention.....	61
2.2	Enforcement.....	62
2.3	Remedial action.....	63
3.	Investigations into allegations.....	63
3.1	Procedures.....	63
3.2	Investigations in practice.....	65
4.	Sanctioning military peacekeepers.....	66
5.	Conclusion.....	67
V.	SUMMARY AND CONCLUSION.....	68
VI.	BIBLIOGRAPHY.....	73

## LIST OF ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
ACRWC	The African Charter on the Rights and Welfare of the Child
AU	African Union
CARBG	Canadian Airborne Regiment Battle Group
CDP	The Committee for Development Policy
CDT	Conduct and Discipline Teams
CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
CRC	Committee on the Rights of the Child
DMSPC	Department of Management Strategy, Policy and Compliance
DPKO	Department of Peacekeeping Operations
GBV	Gender Based Violence
GDI	Gender Development Index
GII	Gender Inequality Index
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
IAC	International Armed Conflict
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
MINURSO	United Mission for the Referendum in Western Sahara
MINUSTAH	The United Nations Stabilisation Mission in Haiti
MONUSCO	The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MOU	Memorandum of Understanding
MTS	Misconduct Tracking System
NATO	The North Atlantic Treaty Organization
NIAC	Non-International Armed Conflict
OIOS	The United Nations Office of Internal Oversight Services
PCC	Police Contributing Country

PKO	Peacekeeping Operation
SEA	Sexual Exploitation and Abuse
SOFA	Status of Forces Agreement
STD	Sexually Transmitted Disease
TCC	Troop Contributing Country
UN	United Nations
UNDOF	United Nations Disengagement Observer Force
UNECE	United Nations Economic Commission for Europe
UNEF	United Nations Emergency Force
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNOCI	United Nations Operation in Côte d'Ivoire
UNOMOZ	United Nations Operation in Mozambique
UNPROFOR	The United Nations Protection Force
UNSC	United Nations Security Council
UNSG	The Secretary-General of the United Nations
UNTAC	United Nations Transitional Authority in Cambodia
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transition Assistance Group
UNTSO	United Nations Truce Supervision Organization
WPS	Women, Peace and Security
The Convention	The Convention on the Privileges and Immunities of the United Nations

## INTRODUCTION

### Peacekeepers as Perpetrators of Sexual Exploitation and Abuse

“IN THE EVENING HOURS THE PEACEKEEPERS COME OUT AND STAND NEAR TO THE WATER PUMP. SOME OF THE GIRLS FROM THE VILLAGE WILL COME AND COLLECT WATER. THE MEN CALL TO THE GIRLS AND THEY GO WITH THEM INTO THE COMPOUND. ONE OF THEM BECAME PREGNANT AND THEN WENT MISSING. WE STILL DO NOT KNOW WHERE SHE IS. THIS HAPPENED IN 2007” –  
YOUNG BOY, SOUTHERN SUDAN

It is undeniably scathing that the United Nations which has been instrumental in setting the norms for the recognition of inherent dignity and the equal and inalienable rights of all human beings,<sup>1</sup> now stands accused of atrocious acts of sexual exploitation and abuse committed by its peacekeepers during a mission.

Sexual exploitation and sexual abuse are an endemic issue and a topic of concern within a UN peace keeping mission. In a country where war, poverty and total disaster is the order of the day, it is not unusual to see that the promise of some money, clean water, food or even protection by UN troops is enough to lure a person in peril into a compromising situation. One of the first reports of sexual exploitation and abuse by UN peacekeepers can be traced back to the 1992-1993 operation known as the United Nations Transitional Authority in Cambodia (UNTAC). There, most of the victims were young children in a hospital as well as local women.<sup>2</sup> Following the incidents in Cambodia in 1993, the UN Special Representative to Cambodia Yasushi Akashi, when questioned about the accusations of peacekeepers sexually abusing local women and children, stated that “boys will be boys”.<sup>3</sup> Ensuing that statement, the former US ambassador to the UN, Richard Holbrooke, gave credence to Yasushi Akashi’s statement by maintaining that “human nature is human nature, and that wherever peacekeepers go, they tend to attract prostitutes”.<sup>4</sup> Their choices of poor words and

---

<sup>1</sup> UDHR, The Universal Declaration of Human Rights was proclaimed and adopted by the United Nations General Assembly in 1948. The drafters produced the very first document that expressed the rights and freedoms to which every human being is equally and inalienably entitled to. The UDHR has become a benchmark by which we measure the human rights violations in the international community and provides a suitable living condition for all. The UDHR serves as a powerful tool for people all over the world to fight against impunity, oppression and atrocities to human dignity. The document is currently available in more than 360 languages.

<sup>2</sup> WILLS SIOBHÁN, *Protecting Civilians: The Obligations of Peacekeepers*, New York: Oxford University Press, 2009, p.27

<sup>3</sup> KELLY NEUDORFER, *Sexual Exploitation and Abuse in UN Peacekeeping: An Analysis of Risk and Preventive Factors*, London: Lexington Books, 2015, p.1

<sup>4</sup> Ibid 3



digression to the matter in question denotes the level of priority given to the issue of sexual abuse by UN officials at that time.

Since then, the phenomenon of sexual exploitation and abuse by UN peacekeepers has risen to be a scourging problem and has spread like wildfire throughout UN Missions around the globe: there have been reports on the shocking acts of abuse by UN peacekeepers in Sierra Leone, Mozambique, Kosovo, Liberia among others.<sup>5</sup> Over time, peace keeping operations have been labelled as sometimes creating a predatory sexual culture which in turn lays the foundation for UN troops to perpetrate horrendous acts ranging from sexual exploitation of children to pornography all the way to raping at gun point against the very same people that they ought to protect.<sup>6</sup> However, even though the abuses by peacekeepers perpetuated over the years, the crimes were not publicized until late 2001 after a report accredited by the United Nations High Commissioner for Refugees (UNHCR) and Save the Children maintained that several West African countries where peacekeeping missions are deployed, are afflicted by repeated instances of sexual exploitation and abuse by aid workers and peacekeepers. The report from Save the Children indicated that numerous agencies are responsible for these acts; a field work research revealed that cases of abuses are highly associated to humanitarian, peacekeeping and security organisations. Furthermore, findings from the fieldwork divulge that troops associated with the UN Department of Peacekeeping Operations (DPKO) were identified as the particular root of abuses in some of their field work locations.<sup>7</sup>

The complications of sexual violence and violations of human rights during an armed conflict is already by itself horrible and difficult to maintain. Having said that, in the case where the perpetrators of sexual violence and violations of fundamental human rights turn out to be the peacekeepers who are in effect deployed to restore and maintain the security and peace in a host country, the acts are deemed more treacherous than ever. Sexual exploitation and abuse (SEA) inimically affect the proper functioning of a peace building process, cripples the overall legitimacy of Peacekeeping Operations (PKO), dispute the effectiveness of the DPKO

---

<sup>5</sup> OLIVERA SIMIC, Regulation of sexual conduct in UN peacekeeping operations, New York: Springer, 2012, p.42. and UNGA Doc. A/57/465, Note by the Secretary-General, 'Investigation into sexual exploitation of refugees by aid workers in West Africa', 11<sup>th</sup> October 2002, pp.9-11

<sup>6</sup> RAGNHILD NORDÅS AND SIRI C. A., Sexual Exploitation and Abuse by Peacekeepers: Understanding Variation, International Interactions, 2003, 39:4, 511-534, DOI:10.1080/03050629.2013.805128, p.512

<sup>7</sup> CORINNA CSÁKY, No One to Turn To, the under-reporting of child sexual exploitation and abuse by aid workers and peacekeepers, London: Save the Children, 2008, p.8

and constitute psychological as well as physical trauma to victims. In the long run peacekeeping missions will be regarded as purposeless by the local population.<sup>8</sup>

Subsequent to the numerous allegations of SEA by UN peacekeepers making international headlines, the UN Security Council deliberated on appropriate actions to take to solve the problem of peacekeepers violating the rights of the very same people they are meant to protect. These allegations are of grave concern to the UN and they have been addressed repeatedly: for instance, there are clear rules and regulations set out in the 2003 Secretary-General's bulletin which guides the code of conducts of UN personnel during a mission and precisely outlines a zero-tolerance policy of any and all SEA by peacekeepers and other UN personnel.<sup>9</sup>

The UN Secretary-General Kofi Annan in his report on the activities of the Office of Internal Oversight Services (OIOS) states,

“Sexual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for. Men, women and children displaced by conflict or other disasters are among the most vulnerable people on earth. They look to the United Nations and its humanitarian partners for shelter and protection. Anyone employed by or affiliated with the United Nations who breaks that sacred trust must be held accountable and, when the circumstances so warrant, prosecuted.”<sup>10</sup>

The problem of SEA allegations by UN peacekeepers is not limited to peacekeepers from one particular country but rather such allegations concern both military and civilian personnel from a wide range of countries, all working under the auspice of the DPKO.<sup>11</sup> The multi-country origin of SEA has led the UNSG, in his 2015 Report on Special measures for

---

<sup>8</sup> Notwithstanding the fact that male dominance and military masculinity are outlined as a common cause of SEA perpetration, thereby directly pinning it on male offenders it should also be well noted that SEA can be perpetrated by women as well as men and both women and men can be victims. The critical moment to take into consideration are the detrimental effects SEA allegations by peacekeepers have on a peace mission regardless of what gender the perpetrator is. SABRINA KARIM AND KYLE BEARDSLEY, Explaining sexual exploitation and abuse in peacekeeping mission: The role of female peacekeepers and gender equality in contributing countries, Vol.53, no.1, 2016, pp.100-115

<sup>9</sup> UN Doc. ST/SGB/2003/13, Secretary-Generals Bulletin, ‘Special Measures for Protection from Sexual Exploitation and Sexual Abuse’, 9<sup>th</sup> October 2013. The Bulletin is a very important UN Document issued by the Secretary-General. The bulletin serves as a landmark to UN's actions and policies in addressing the criminal misconduct of peacekeepers, this bulletin provides special measures for the protection of the local population against sexual exploitation and abuse by peacekeepers.

<sup>10</sup> Ibid. No.5

<sup>11</sup> NDULO MUNA, The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions, Cornell Law Faculty Publications, paper 59, 2009, p.130

protection from sexual exploitation and sexual abuse, to declare his intentions to provide in future reports to the General Assembly, country specific information on the number of allegations by Troop Contributing Countries (TCC).<sup>12</sup> Attributable to this new action, it is only recently that TCCs have started to be named and shamed for the atrocities committed by their troops while on a mission. The fairly new data discloses the nationalities of perpetrators, the specific crimes committed, the age of the victims as well as actions taken.<sup>13</sup>

My research fills the existing gap in literature and aims to explore if there is a relationship between military peacekeepers from troop contributing countries and sexual exploitation and abuse. It will further determine whether or not there are other factors within the TCC such as societal norms of gender inequality, underreporting of sexual violence and attitudes of impunity that help explicate variations in the number of SEA crimes perpetrated by each country's troops while on mission. This research will work towards answering the question whether peacekeepers express the norms they have grown accustomed to in their home countries. Furthermore, this thesis will analyse the legal prosecution by TCCs of an alleged perpetrator as well as the strategies adopted by the UN to address SEA allegations and its prevention mechanism.

## **I. LEGAL FRAMEWORK OF PEACEKEEPING OPERATIONS**

Before diving into the comprehensive research and fact findings of the relationship between TCCs and sexual exploitation and abuse by their troops, it is crucial to briefly present the structure and history of UN peacekeeping operations. Peacekeeping operations can be traced back to 1948 and can be divided into generations, with each generation having a unique set-up and different characteristics. Understanding the evolution of peacekeeping operations as well as the four generations, will help to answer further related questions on allegations of SEA by peacekeepers during a mission. Answering the question of “whether peacekeepers

---

<sup>12</sup> UNGA DOC. A/69/779, Report of the Secretary-General, ‘The Special measures from sexual exploitation and sexual abuse’, 13<sup>th</sup> February 2015,

<sup>13</sup> Data and statistics obtainable from UN website: <https://conduct.unmissions.org/sea-data-introduction> Conduct in UN Field Missions. Information on the nationality of uniformed personnel implicated in allegations of SEA is provided from 2015 onwards as outlined by the Secretary-General, from 2015 onwards, information is also available on interim actions, the duration of investigations, details of actions taken by member states, and on the referrals for criminal accountability.

externalize the norms they have grown accustomed to in their home countries” will be to no avail without first understanding the makeup of peacekeeping personnel and the roles of TCCs as well as Police Contributing Countries (PCCs).

## **1. Peacekeeping Operations**

### **1.1. The Inception of United Nations Peacekeeping**

The United Nations was established right after World War II to “save succeeding generations from the scourge of war” after the ineffectiveness of the League of Nations. One of the primary purposes of the organisation is to maintain international peace and security as stipulated in Art 1§1-4 of the Charter of the United Nations.<sup>14</sup> The UN employs a multitude of activities to achieve and maintain international peace and security; some of these activities are preventive diplomacy and peace-making, peacekeeping, peacebuilding, disarmament, sanctions and peace enforcement.<sup>15</sup>

According to the UN Charter, the United Nations Security Council has the core responsibility for maintaining international peace and security.<sup>16</sup> The Security Council may therefore adopt specific measures deemed fit so as to perform its duties effectively; such measures may include the establishment of a peacekeeping operation. Although the concept of peacekeeping is not explicitly provided for in the Charter, Chapters VI, VII and VIII provide the legal basis for the Security Council to take actions for preserving peace and security. “Chapter VI deals with the ‘Pacific Settlement of Disputes’, Chapter VII contains provisions related to ‘Action with respect to the Peace, Breaches of the Peace and Acts of Aggression’ and Chapter VIII provides for the involvement of regional agencies for the maintenance of international peace and security.”<sup>17</sup>

---

<sup>14</sup> United Nations Peacekeeping Operations, ‘Principles and Guidelines’, United Nations Department of Peacekeeping Operations, Department of Field Support, 2008, p.13, Available at: [https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf)

<sup>15</sup> In his 1992 ‘Agenda for Peace Report’, Secretary-General Boutros-Ghali identified preventive diplomacy, peace-making, peacekeeping and peace building as a recommendation for strengthening the prevention and resolution of conflict in order to maintain International peace and security. He went further to give a descriptive definition of the principles. Preventive Diplomacy involves taking actions to prevent disputes from arising between parties, to prevent existing dispute from escalating into conflict; Peace making are actions taken to bring hostile parties to an agreement; Peace keeping involves the deployment of UN presence in the field with the consent of all parties concerned; and Peace building are the actions taken to identify and support structures which would strengthen the peace in order to avoid a relapse.

<sup>16</sup> The member states of the United Nations confer on the Security Council primary responsibility for the maintenance of international peace and security. Charter of the United Nations, Chapter V Article 24.

<sup>17</sup> Ibid 14. The UN Charter is the core instrument governing the UN, it was signed at UN Conference on International Organisation (UNCIO) in San Francisco 1945. All member states are bound by the rules laid down

The first UN peacekeeping operation was the UN Truce Supervision Organization (UNTSO) in 1948, with the deployment of an unarmed military observation team following the armistice between Israel and its Arab neighbours. Succeeding the first peacekeeping operation, in 1956, the United Nations took another major step by deploying the very first armed United Nations force known as the United Nations Emergency Force (UNEF). The UNEF was deployed to Egypt after the Anglo-French Israeli attack on the country. Both the UNTSO and UNEF played a major role in the early stages of shaping PKO. The success of the UNEF in mitigating the Suez crisis as well as the input from the UNTSO, which contributed to the successful Arab-Israeli Armistice Agreement, led to further demands for UN peacekeeping operations by the UN.<sup>18</sup> Throughout the years, the UN tried to solve several conflicts by establishing peacekeeping operations, in a nutshell, peacekeeping operations aimed at, and still purport to, establishing and sustaining a peaceful environment by using legitimate mandates over hostile parties.

## **1.2 SEA Allegations in Relation to the Four Generations of Peacekeeping Operations**

The evolution of PKOs can be explained through the four generations' model of analysis, each generation adding a crucial factor which distinguishes it from its predecessor. The United Nations Emergency Force (UNEF), the United Nations Peacekeeping Force in Cyprus (UNFICYP), and the United Nations Disagreement Observer Force (UNDOF) were among the first generations of UN PKO. This generation launched with the UNTSO in 1948 and continued till the late 1980s.<sup>19</sup> A feature of the Cold War, those UN missions engaged in what is today known as "traditional peacekeeping". The UNEF endorsed the three basic principles for peacekeeping operations as laid down by the league which included (1) consent of the host nation, (2) impartiality and independence (equal treatment of warring parties without discrimination) and (3) the non-use of force except in self-defence as an absolute last resort. These principles adopted during the UNEF laid the foundation for future peacekeeping operations as it was the first time UN troops were interposed between two warring parties thus reducing contact between forces and diminishing the probability of escalation or breach

---

by the charter and are equally bound to act according to the purpose of the UN. Provisions under the charter prevail in cases that are conflicting between the obligations of member states and the obligations of the UN Charter as well as any other international instrument.

<sup>18</sup> GOULDING MARRICK, *The Evolution of United Nations Peacekeeping*, International Affairs 69, no.3, 1993, 451-464. DOI: 10.2307/2622309.

<sup>19</sup> OLIVERA SIMIC, *Regulation of Sexual Conduct in UN Peacekeeping Operations*, New York: Springer, 2012, p.15

of peace.<sup>20</sup> Though these principles were enforced, the institutions managing the peace operations such as the office for Special Political Affairs were still developing; thus leading to limited planning of the peacekeeping operations. Many of the peacekeeping operations during the Cold War era were not properly planned but rather hastily organised and deployed to crisis zones thus lacking clear guidance, leadership and objectives.<sup>21</sup>

Peacekeeping operations during the Cold War era witnessed the predominance of male military personnel. Between 1957 and 1989 only 0.1% of military personnel deployed were women, while the entire international civilian staff included between 5% and 23% of females.<sup>22</sup> The question of gender equality and promotion of female participation in peacekeeping operations did not arise during the Cold War era. Additionally, the peacekeeping mandates gradually shifted the roles of peacekeepers. Peacekeepers changed from being unarmed military observers to act as military buffers between warring parties. The mandate also included extra tasks for peacekeepers such as conducting training for national armed forces and maintaining internal order and security. Though peacekeeping operations during this generation started to involve more civilian personnel, the interaction between the local population and the peacekeeping operation was very minimal.<sup>23</sup>

The second generation commenced by the end of the Cold War. The United Nations Transition Assistance Group (UNTAG), the United Nations Operations in Mozambique (UNOMOZ), and the United Nations Transitional Authority in Cambodia (UNTAC) were some of the second generation PKO.<sup>24</sup> International politics encountered a drastic change after the Cold War leading to profound changes in the nature of peace operations. This new era witnessed an alteration in the nature of conflict with the prevalence of internal conflict rather than interstate conflicts.<sup>25</sup> During this generation, troops were deployed to more complex disputes and to more dangerous zones. Consequently, UN forces began to play an active role in not only observing and monitoring peace but seeking to resolve conflicts between belligerent parties.<sup>26</sup> Accordingly, the end of the Cold War brought about an

---

<sup>20</sup> AGOSTINHO ZACARIAS, *The United Nations and International Peacekeeping*, 1996, p.32, and OLIVER SIMIC, p.16

<sup>21</sup> TERRENCE O'NEILL, NICK REES AND NICHOLAS REES, *United Nations Peacekeeping in the Post-Cold War Era*, Taylor and Francis, 2005, p.5

<sup>22</sup> LOUISE OLSSON., *Mainstreaming Gender in Multidimensional Peacekeeping: A Field Perspective*, *International Peacekeeping* 1, 7(3), 2000, p.2

<sup>23</sup> OLIVERA SIMIC, p.19

<sup>24</sup> UFUK BASAR, *An Analysis of Assessment of Peacekeeping Operations*, *The Korean Journal of Defense Analysis*, Vol.26, No.3, September 2014, p.390

<sup>25</sup> KENKEL M. KAI, *Five generations of peace operations: from the 'thin blue line' to 'painting a country blue'*, *Revista Brasileira de Politica Internacional*, 56(1), 2003, pp.122-143

<sup>26</sup> *Ibid.* 25

increase in the consciousness of the international community's responsibility to provide for humanitarian aid to the needing populations for this reason, the second generation witnessed the participation of regional actors such as the NATO and the African Union (AU) in PKO.<sup>27</sup> A distinguishing feature of the second generation missions was the expansion of their duties and thus of their mandates. Several civilian tasks were added upon the already existing first-generation military mandates; PKOs were also assigned the task of organising elections, disarming the warring parties, delivering humanitarian aid, promoting human rights, assisting refugees as well as helping in government capacity-building.

Almost all second-generation peacekeeping operations were deployed under Chapter VI of the Charter of the UN; hence, there were no apparent changes made to their rules of engagement. The success of these missions was usually dependent on the collaboration and the consent of the belligerent parties as well as on UN's moral persuasion.<sup>28</sup>

The generation that followed aimed towards restoring a collapsed state and providing support for restructuring it and it introduced the concept of peace operations. Peace operations are distinguished by the increased authorization to use force in order to impose the aims and objectives of a mission's mandate. Thus, these missions have a more robust mandate and are deployed under Chapter VII of the UN Charter, which illustrates the enforcement measures undertaken during the operation, hence the heavy arms by UN troops, without the consent of either one of the conflicting parties.<sup>29</sup> This generation of PKOs is made up of several personnel working under the auspice of the DPKO including civilian police, military forces, as well as non-governmental organisations, and they strive to enforce peace between hostile parties.<sup>30</sup>

Accordingly, during this generation, the debate over humanitarian intervention and peace enforcement as well as the relationship between human rights and non-intervention played a crucial role in peace operations. The role of humanitarian intervention is a distinctive characteristic of the third generation which trickled down till the fourth generation. The 1999 North Atlantic Treaty Organization (NATO) action against Yugoslavia is the first intervention to predominantly maintain humanitarian motivation.<sup>31</sup>

---

<sup>27</sup> ANDREU M. and TOM WOODHOUSE, The United Nations armed conflict and peacekeeping, Open University of Catalonia Foundation

<sup>28</sup> Ibid. 25

<sup>29</sup> Ibid. 25

<sup>30</sup> Ibid. 24.

<sup>31</sup> THORSTEN GROMES, A Humanitarian Milestone? 'NATO's 1999 Intervention in Kosovo and Trends in Military Responses to Mass Violence, PRIF Report, 2019, p.3

Similar to the third generation, peace operations in the fourth generation consist of a robust mandate which includes peacebuilding operations that authorizes the use force by the troops and while fulfilling civilian tasks that have a more obtrusive effect on the local population.<sup>32</sup>

The fourth-generation missions are described as peacebuilding mission and are therefore directed to uphold structures which would strengthen and solidify the peace in a territory to avoid a relapse into conflict. The Concept of peacebuilding is taken from Boutros-Ghali's Agenda for Peace Report (United Nations 1992) which affirms that there are specific measures which need to be enacted for peace-making and peacekeeping to be genuinely fruitful. Following a conflict such measures might include; disarming the previously warring parties and restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisor and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting processes for political participation.<sup>33</sup>

An extreme type of peacebuilding is the model of UN transitional administration wherein the sovereignty of the territory, in most cases, is transferred after the conflict to the UN peace operations in charge and all executive, legislative and judicial authority rests upon the UN mission in the interim. There have only been two of such administrations which have been set up till today; the United Nations Interim Administration Mission in Kosovo (UNMIK) and the United Nations Transitional Administration in East Timor (UNTAET).<sup>34</sup> One of the predominant dissimilarity of the fourth-generation is the enthusiasms to resolve the cause of conflict permanently. Unlike the previous generations, which focus on the management of conflict and work towards a negotiated settlement based on the consent of both warring

---

<sup>32</sup> BELLAMY ALEX J., The Next Stage in Peace Operations Theory? *International Peacekeeping*, Vol 11, No1, 2004

<sup>33</sup> BOUTROS-GHALI, B., United Nations Secretary General, An Agenda for Peace: Preventive Diplomacy, Peace-making and Peacekeeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council United Nations, 1992, 11(3), 201–218.  
<https://doi.org/10.1177/004711789201100302>

<sup>34</sup> DiFELICE BETH, International Transitional Administration: The United Nations in East Timor, Bosnia-Herzegovina, Eastern Slavonia, and Kosovo – A Bibliography, *International Journal of Legal Information*, Vol.35: Issue. 1, Article 7, 2007, Available at:  
<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1084&context=ijli>



parties, the peacebuilding missions aim at resolving the conflict from its roots and foster a conducive environment for long-lasting peace and using force if deemed necessary.<sup>35</sup> This is achieved through a two-tier process of political institutionalisation and economic liberalisation; these processes require direct involvement in the shaping of governmental institutions and has turned part into peacebuilding activities known as ‘state building’.<sup>36</sup> Over the years, peacekeeping operations have evolved substantially and now include a variety of personnel other than peacekeepers; civilian personnel such as volunteers, electoral observers and administrators are relied on during a mission.<sup>37</sup> It is also crucial to understand that no two UN peacekeeping operation are alike, each operation is distinguished by the environment in which it operates and the extent to which it is authorized to carry out peacekeeping actions depend on the mission’s mandate.<sup>38</sup>

## **2. RULES GOVERNING PEACEKEEPING OPERATIONS**

This subchapter aims to appraise the rules governing every UN peacekeeping operation. Taking into account the scope of the present academic work; this subchapter will predominantly focus on the rules and guidelines that are pertinent in tackling the criminal conduct of military peacekeepers. This subchapter is further divided into two sections. The first section focuses on the peacekeeping force. It considers the composition of the peacekeeping mission and how peacekeeping personnel is categorized. This subchapter also examines the roles of the troop and police-contributing countries and the motivation behind the contribution of troops to UN PKO by UN member states. The subsequent section deals with the legal (primarily conventional) norms establishing the peacekeepers’ criminal accountability regime. This section elaborates on the Status of Forces Agreement (SOFA) between the UN and a host government, and the Memorandum of Understanding (MoU) between the UN and a Troop Contributing Country.

---

<sup>35</sup> Ibid. 25

<sup>36</sup> Ibid.25

<sup>37</sup> OLIVER SIMIC, p.25

<sup>38</sup> KRISTINE ST-PIERRE, *Then and Now: Understanding the Spectrum of Complex Peace Operations*, Pearson peacekeeping centre, 2008, p.23

## 2.1 Categories of UN Peacekeeping Personnel

In 2005, the UNSG's Special Advisor Prince Zeid Ra'ad Zeid al-Hussein, elaborated on the categories of peacekeeping personnel. According to the Zeid report, as it is popularly known today, there are five categories of personnel included into a UN peacekeeping mission, each one having its own separate set of rules. They are classified into: (a) UN staff, (b) UN civilian police and military observers from TCC/PCC, (c) members of national contingents, (d) UN volunteers, and (e) individual contractors.<sup>39</sup> As of September 2019, there are a total of 84,382 uniformed personnel (both police and troop forces from TCCs and PCCs), 4,539 international civilian personnel, 8,393 local civilian personnel, and 1,230 UN volunteers serving in fourteen ongoing peacekeeping operations all over the world.<sup>40</sup> For clarification, the UN distinguishes peacekeeping personnel into 2 categories which include the uniformed personnel and the non-uniformed personnel. The uniformed personnel which includes troops, military observers and police are most times armed, while the non-uniformed personnel which includes the civilian personnel and the UN volunteers are typically unarmed. According to the statistics provided by the UN Department for Management Strategy, Policy and Compliance (DMSPC), uniformed personnel have the highest number of SEA allegations made against them.<sup>41</sup> In 2019, the Office of Internal Oversight Services (OIOS) recorded a total of 80 SEA allegations against peacekeepers during a mission; out of the 80 allegations made, 74 considered military contingents as perpetrators. Similarly, in 2016, out of the 104 allegations recorded, 80 were perpetrated by military contingents.<sup>42</sup> Since the commencement by the DMSPC of the electronic system for tracking allegations of misconduct, the released data divulges that from 2007 up to 2019 the military as well as the police had the highest number of allegations recorded against them.

---

<sup>39</sup> UNGA Doc. A/59/710, Report of the Secretary-General's Special Advisor, Prince Zeid Ra'ad Zeid al-Hussein, on a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations Peacekeeping Operations, 24<sup>th</sup> March 2005, [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/59/710](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/710)

<sup>40</sup> Peace and Security Section of the United Nations Department of Global Communications, in consultation with the Department of Peace Operations, Department of Operational Support – DPI/1634/Rev.220 September 2019, [https://peacekeeping.un.org/sites/default/files/pk\\_factsheet\\_09\\_2019\\_english\\_1.pdf](https://peacekeeping.un.org/sites/default/files/pk_factsheet_09_2019_english_1.pdf) last accessed: 9<sup>th</sup> March 2020.

<sup>41</sup> The Department for Management Strategy, Policy and Compliance (DMSPC) is responsible for enforcing United Nations policies on conduct in peacekeeping missions and special political missions. In this regard, DMSPC works closely with the Department for Peace Operations and the Department for Peacebuilding and Political Affairs. The conduct and discipline function for all field missions is overseen by the Secretary – General for Management Strategy, Policy, and Compliance. Website: <https://conduct.unmissions.org/sea-data-introduction>

<sup>42</sup> Ibid 41. Website: <https://conduct.unmissions.org/sea-subjects> last accessed 20th march 2020. As per the Office of Internal Oversight Services, matters of sexual exploitation and abuse are counted by reports received.

Following this database, one can assume that SEA allegations and armed military peacekeeping personnel show a connection. To elucidate further, the assumption that SEA allegations and armed military are correlated is derived from the use of force and weapons by peacekeepers. While peacekeepers are only allowed to use their weapons in self-defence or in defence of the mandate,<sup>43</sup> studies have shown that victims of SEA are often threatened by firearms to engage in survival sex, transactional sex, and other abuses. The authorization of the use of force has changed the power dynamics in the field and perpetrators of SEA take full advantage of it.<sup>44</sup>

## 2.2 Troop Contributing Countries

Since its inception, the UN has no standing army or police force of its own, and for a peacekeeping operation to function, it needs peacekeeping personnel; this undeniably leads up to a series of critical questions concerning UN peacekeeping:

- How does the UN initiate a peacekeeping operation?
- How does the UN form its peacekeeping force? and
- who provides all the personnel?<sup>45</sup>

Former Secretary General Kofi Annan described the UN as the “only fire brigade in the world that has to wait for the fire to break out before it can acquire a fire engine”.

Nevertheless, having a standing reserve may seem logical and easy for deployment purposes but it would be extremely costly to have a force of several thousands of people from member states on permanent standby<sup>46</sup>. On this account, the UN needs to ask member states to contribute peacekeeping personnel for every peacekeeping operation.

Importantly, member states are in no way obliged to provide any peacekeeping personnel but rather do so on a voluntary basis. As a result, some member states incline towards allocating financial aids for peace operations rather than sending personnel. As a reason for this factor, the Security Council authorizes the Secretary General to consult with member states while

---

<sup>43</sup> United Nations Peacekeeping Operations, Principles and Guidelines, p.33-35  
[https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf)

<sup>44</sup> JASMINE-KIM WESTENDORF AND LOUISE SEARLE, Sexual exploitation and abuse in peace operations: trends, policy responses and future directions, *International Affairs*, Volume 93, Issue 2, March 2017, p.366

<sup>45</sup> United Nations Peacekeeping, available at: <https://peacekeeping.un.org/en/forming-new-operation> Forming a new operation. The UN does not have a standing reserve force, the peacekeepers which are provided by the troop contributing countries wear their countries' uniform and are identified as UN peacekeepers only by a blue helmet or beret or a badge.

<sup>46</sup> United Nations Peacekeeping, Does the UN have a standing reserve Force? Available at: <https://peacekeeping.un.org/en/military>

planning a peacekeeping operation to find countries that are willing to participate and contribute troops for the peace operations.<sup>47</sup>

The first decade of the twenty-first century witnessed a rise in demand for peacekeepers due to the increase of UN peacekeeping missions. This, combined with the increasingly hostile environments to which peacekeepers were deployed, minimized the willingness and capacity of some UN member states to provide peacekeeping personnel any further.<sup>48</sup> In 2011, the former Secretary-General Ban Ki Moon expressed that procuring the required resources and troops for UN peacekeeping was time-consuming and exhausting. He also affirmed that he persistently had to implore world leaders to make resources available.

This situation raises the question of why some member states are more willing to contribute to a mission and the factors that prompt such willingness which in turn might shed light on the behaviours of peacekeepers and SEA allegations.

The task of supplying peacekeepers contends with an unequal distribution among member states. The majority of the UN uniformed personnel come from particular countries.

According to the 2019 UN Peacekeeping data that covered the troop contributions by countries, the top 10 contributors of uniformed personnel included Ethiopia, Bangladesh, Rwanda, Nepal, India, Pakistan, Egypt, Indonesia, Ghana and China.<sup>49</sup> Over the same time frame, the Western countries, which are also some of the world's most stable and prosperous nations and also have mastery over high-end military capacities have almost fully abstained from contributing troops.

The unequal distribution of peacekeeping personnel among member states indicates that there are a variety of reasons as to why member states decide to provide forces to a peacekeeping operation, ranging from economic to political, security and even normative concerns.<sup>50</sup>

Importantly, the priorities set out by troop-contributing countries are not always in line with those of the UNSC; thus states might sometimes weigh the benefits which they intend to gain by their act of contribution. The realist-inspired account further explains the actions of troop-contributing countries; this school of thought maintains that states provide peacekeepers

---

<sup>47</sup> The Security Council authorizes the Secretary General to consult with the governments of member states with respect to their views concerning financing the force as well as to seek members states that are willing to contribute troops. International Court of Justice, Reports of Judgments, Advisory Opinions and Order, Certain Expenses of the United Nations (Article 17, Paragraph 2 of the Charter) 20 July 1962.

<sup>48</sup> ALEX J. BELLAMY AND P.D. WILLIAMS, *Providing Peacekeepers: The Politics, Challenges, and Future of United Nations Peacekeeping Contributions*, Oxford: Oxford University Press, 2013, p.3

<sup>49</sup> Summary of Troops Contributing Countries by Ranking: Police, UN Military Experts on Mission, Staff Officers and Troops, Available at: [https://peacekeeping.un.org/sites/default/files/2\\_country\\_ranking\\_15.pdf](https://peacekeeping.un.org/sites/default/files/2_country_ranking_15.pdf)

<sup>50</sup> Ibid. 48

solely to serve their national security interests.<sup>51</sup> For example, many non-Western states contribute personnel in order to enhance their international stance (i.e. India), while other countries provide forces to be able to influence UN decision-making to their advantage. Another example of state self-interest relates to the financial gains for the TCCs. The UN's compensation payment is \$1,428 per soldier per month paid to the TCC;<sup>52</sup> the individual governments then pay these soldiers in return according to their national pay grade and ranking. It has been argued that this form of payment results in "developing states" such as Bangladesh and Fiji to provide the larger share of uniformed personnel in order to receive the UN's compensation which is higher than the deployment cost, and on the other hand, more affluent states often choose to pay for missions as opposed to sending uniformed personnel.<sup>53</sup> However, over time the economic factor as a motivation for troop contribution has been discredited. Scholars found certain loopholes on this theory which proves that financial benefits are not the main motive for contributing peacekeepers in UN missions. First and foremost, the UN's continuous financial crisis impedes the reimbursement process thus making it an unreliable source of income for TCC's and directly placing the burden of financial risks on the contributing countries in the interim. This act of delayed payment by the UN cannot be a motivating factor for peacekeeping contributions. More specifically, peacekeepers require training and equipment; the investment in training is not entirely covered by the UN compensation and thus placing again the financial burden on the TC.<sup>54</sup> The peacekeeping force is an international force constituted of military contingents from various countries deployed into the sovereign territory of another country to execute their mandate. Each military personnel working under the auspice of the UN are first and foremost members of their national armies and are then seconded to work under the control of the UN.<sup>55</sup> The diverse structure of military personnel can hinder the proper functioning of the peacekeeping force due to lack of centralized command. Also, the legal status of all UN

---

<sup>51</sup> TREVOR FINDLAY, *Challenges for the New Peacekeepers*, Introduction: Motivations for participation, SIPRI Research Report No. 12, Stockholm International Peace Research Institute, Oxford University Press, 1996, p.7

<sup>52</sup> As of 1 July 2019, countries volunteering uniformed personnel to a peacekeeping operation are reimbursed the sum of \$1,428 per soldier per month which is directly paid to the troop contributing country. This sum is the UN standard rate for uniformed personnel and is approved by the General Assembly. United Nations Peacekeeping, *How we are funded*, available at: <https://peacekeeping.un.org/en/how-we-are-funded>

<sup>53</sup> BOVE VINCENZO & RUGGERI ANDREA, *Kinds of Blue: Diversity in UN Peacekeeping Missions and Civilian Protection*, *British Journal of Political Science*, 2015, doi: 10.1017/S0007123415000034.

<sup>54</sup> BELLAMY AND WILLIAMS, p.9

<sup>55</sup> United Nations Peacekeeping, *Military*, 'Global contribution for global peace', available at: <https://peacekeeping.un.org/en/military>

personnel deployed during a peace operation is a complex and challenging issue. Hence, MoUs and SOFAs play a primary role in every peace operation initiated by the UN.<sup>56</sup>

### **3. FORMAL AGREEMENTS WITH MEMBER STATES**

The presence of foreign forces on the territory of a sovereign state remains to date a politically complicated and juridically challenging situation. The core fundamental principle of the UN for every peacekeeping operation is consent: peacekeeping missions are only deployed with the consent of the host-state government and other parties to the conflict.<sup>57</sup> However, the UN Security Council does not always gain solid consent from host states due to various reasons as highlighted in the following subchapters. Moreover, the legal status of the forces deployed remains somewhat unclear. It is essential to distinguish under whose jurisdiction peacekeepers are in terms of codes of conduct, as well as disciplinary actions and criminal prosecutions initiated against them, and the kind of immunity they have while working under the auspice of the UN.

The entire situation surrounding a peacekeeping operation is very complicated. Two factors to be considered are: first, the relationship between the UN and the sovereign states that consents to the presence of the peacekeeping force, and second, the relationship between the UN and the member states that provide troops and equipment. These two relationships are respectively regulated by Status of Forces Agreements and Memoranda of Understanding. The Security Council resolution that establishes the peacekeeping operation and defines its mandate, the SOFA and the MoU, serve as the three key documents that regulate UN peace operations.<sup>58</sup>

---

<sup>56</sup> CHIYUKI AOI, CEDRIC DE CONING, AND RAMESH THAKUR, *Unintended Consequences of Peacekeeping Operations*, United Nations University Press, 2007, p.49, available at: <https://collections.unu.edu/eserv/UNU:2483/pdf9789280811421.pdf>

<sup>57</sup> CHRISTINE GRAY, *Host-State Consent and United Nations Peacekeeping in Yugoslavia*, 7 *Duke Journal of Comparative and International Law*, 1996, p.241

<sup>58</sup> BRUCE OSWALD, HELEN DURHAM, AND ADRIAN BATES, *Documents on the Law of UN Peace Operations*, Oxford University Press, 2019, p.15

### 3.1 Status of Forces Agreement (SOFA)

A status of forces agreement is the legal agreement between the host state and the UN that deploys its troops on the host states sovereign territory. The SOFA serves as the legal structure that characterizes the rights and commitments of a foreign visiting force in the territory of a receiving state.<sup>59</sup> The purpose and mission of every foreign force in the territory of a receiving state differs. Thus, the provision of every SOFA is distinctive following the objectives and the requirements of the respective peacekeeping operation. There is no one standard SOFA text that acts as a guideline for constituent SOFAs. However, for UN peacekeeping operations, the UN drafted a Model SOFA at the request of the General-Assembly.<sup>60</sup> Secretary-General Javier Pérez de Cuellar promulgated the model in 1990, and it functions as the current standard Status of Forces Agreement between the UN and a host state. This model lays the foundation during negotiations in regard to the deployment of peacekeeping forces, and it is open for modification by the parties involved according to their preferences.<sup>61</sup> Although consent of the receiving state remains the core principle of every peacekeeping operation, the UN Security Council is not always able to negotiate a SOFA. In light of this academic work, this research will focus on the provisions of SOFAs that influence the criminal accountability of military peacekeeping personnel.

#### a) Exclusive Jurisdiction of Troop Contributing Countries

The provision of the SOFA between the UN and host countries determines the legal status, privileges and jurisdictional immunities of all UN peacekeeping personnel deployed on the territory of a host state.<sup>62</sup> Significant in this regard is the application of the Convention on the Privileges and Immunities of the United Nations 1946 (hereinafter referred to as the 1946 UN Immunities Convention). Since the UN PKO serves as an ancillary organ of the UN; hence, it enjoys the latter's privileges and immunities as enshrined in Art. II of the Convention.<sup>63</sup>

---

<sup>59</sup> DIETER FLECK, Guidebook: Drafting Status-of-Forces Agreements (SOFAs), Toolkit-Legislatting for the Security Sector, Geneva Centre for the Democratic Control of Armed Forces, p.8

<sup>60</sup> UNGA DOC. A/45/594, Report of the Secretary-General, 'Model status-of-forces agreement', 9<sup>th</sup> October 1990. It set forth the responsibilities, obligations and rights between the United Nations and the Host State during a UN peacekeeping operation. Available at: <https://undocs.org/a/45/594>

<sup>61</sup> SCOTT SHEERAN, UN Peacekeeping and The Model Status of Forces Agreement, United Nations Peacekeeping Law Reform Project, School of Law, University of Essex, 2010, pp.1-4

<sup>62</sup> Chapter XVI, Art.105 Charter of the United Nations

<sup>63</sup> Convention of the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946. The Convention was adopted and proposed to each member state of the United Nations for accession.

In this regard, all UN peacekeeping personnel automatically also enjoy these privileges and immunities in the respective order:

- i. “Special Representatives, Commanders of the military components of the UN PKO, the head of the UN civilian police and other high-ranking members of the Special Representative staff shall be conferred with the status of diplomatic immunity and privilege.
- ii. Members of the UN Secretariat assigned to the civilian component and employees considered as experts on a mission by the Special Representative or commander are entitled to the privileges and immunities of Art. V, VI and VII of the Convention.
- iii. Locally recruited members of the UN for PKO shall enjoy the immunities and privileges stipulated in the Convention only in regard to official acts.
- iv. ‘Military personnel from TCC for the UN PKO have the privileges and immunities made available for in the present agreement.’<sup>64</sup>

Furthermore, the properties of the United Nations, its funds and the assets of participating states used in the territory of a host state are as well covered by immunity and therefore exempted from every form of legal process in and by the host State as stipulated in Article II.<sup>65</sup>

All these provisions laid out by the Convention pave the way for the exclusive jurisdiction by TCC. More particularly, with regard to criminal accountability of military peacekeeping personnel, paragraph 47(b) of the SOFA Model grants exclusive criminal jurisdiction of sending states.

“Military members of the military component of the United Nations peace-keeping operation shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in (host country/territory).”<sup>66</sup>

Conferring such exclusive criminal jurisdiction on sending states implies that only the TCC is competent to take legal actions against military peacekeepers accused of committing a crime during their assignment. The host state does not have the authority to bring lawsuits against

---

<sup>64</sup> MODEL SOFA, Status of the Members of the United Nations Peacekeeping Operation”, ‘Privileges and Immunities’

<sup>65</sup> Art. II of the Convention

<sup>66</sup> Paragraph 47(b) of the Model SOFA



military components deployed on its territory. Should the government of a host state reckon that a member of the UN PKO is responsible for a criminal offence, it shall inform the Special Representative and present any evidence available. The Special Representative or Commander of the force shall conduct further investigations and then conclude with the host government whether or not criminal proceedings should be initiated.<sup>67</sup>

As a result of the unlimited access to immunities and privileges enjoyed by UN personnel as complemented by the exclusive jurisdiction of the TCC, peacekeepers may tend to go astray in their actions. To safeguard the local laws and orders and at the same time to assure that peacekeepers respect these laws, the Model SOFA prescribes that the peacekeeping force and its peacekeepers are obliged to respect the laws of the host state.<sup>68</sup> However, as a result of the host State relinquishing jurisdiction, the requirement of respect for local laws by peacekeepers is problematic in practice. The meaning of this paragraph is limited, as local laws and regulations can only be relevant to peacekeeping personnel if its content is integrated into the legal framework that governs the operation.<sup>69</sup> In practice, it is a blatantly implausible claim to assume that the Special Representative of the Secretary-General or the Force Commander can at all times ensure that peacekeepers do not commit offences against the local population or do not breach the local laws.

#### b) Absence of a SOFA between the Host State and the United Nations

As noted above, the UN ought to always conclude a SOFA with the host State to secure the necessary consent essential for the deployment of peacekeepers. However, the UN sometimes finds itself in a fix while negotiating a SOFA. Certain obstacles may hinder the UN from concluding a SOFA on time, or extreme cases constrain the Security Council from negotiating a SOFA at all. Lack of consent from the host State to conclude a SOFA is the greatest threat to the success of any peacekeeping operation. One could find the lack of consent by host states perplexing as peacekeepers are mainly in the country to offer help. However, there are various reasons as to why governments may refuse to grant consent. For example, in the case of not being able to negotiate a SOFA in time, the legitimacy of the host government plays a role. It is for instance that the situation of a country requires the prompt

---

<sup>67</sup> Model SOFA. "Jurisdiction", paragraph 47(a)

<sup>68</sup> Model SOFA Paragraph 6

<sup>69</sup> BURKE RÓISIN, Status of Forces Deployed on UN Peacekeeping Operations: Jurisdictional Immunity, *Journal of Conflict and Security Law*, Vol.16, no.1, 2011, p.67

deployment of a UN force to prevent humanitarian calamities; however, at that particular time frame, there is no competent and legitimate government to negotiate an agreement.<sup>70</sup> In the same vein, governments may outrightly refuse to grant consent, which ultimately proves to be even more detrimental for the peacekeepers. For instance, in a situation where the interests of the government clash with peacekeeping activities like reporting human rights abuses perpetrated by government actors and protecting civilians from government inflicted violence, or, in extreme cases a government is not willing to implement peace agreements between the belligerent parties, while this is included in the UN peacekeepers' mandate.<sup>71</sup> Furthermore, the lack of consent from the host-state can be detrimental to the peacekeepers' safety and security. In this context, without the explicit assent of the government, the latter can take extreme actions against peacekeepers, such as obstructing medical or casualty assistance or impeding crucial supplies from reaching peacekeepers.

In a case where the Security Council encounters a delay in the negotiation of an agreement before deploying forces, more often than not the UN then tries to reach an agreement and establish a SOFA after the deployment of peacekeepers in the mission country. This can lead to prolonged negotiations and sometimes, the UN might never attain an agreement between the host government.<sup>72</sup>

As established above, the core function of the SOFA is to determine the legal status of the peacekeeping force deployed on the sovereign territory of a State. The question then is, in the absence of a SOFA agreement between the UN and the host government, which directives govern the conduct of peacekeeping personnel? In such a case, the UN Model SOFA takes precedence, at least in those parts that it reflects customary international law. In other words, the exclusive criminal jurisdiction of the TCC's in regard to the conduct of peacekeeping personnel, as stipulated in Art 47(b) of the Model SOFA, is only applicable if the jurisdictional provisions of the Model SOFA have acquired the status of customary International Law.<sup>73</sup>

---

<sup>70</sup> SOFIA SEBASTIAN AND ADITI GORUR, U.N. Peacekeeping & Host-State Consent: 'How Missions Navigate Relationships with Governments', Stimson, March 2018, p.20

<sup>71</sup> SEBASTIAN AND GORUR, p.5

<sup>72</sup> In practice, a concluded agreement is not always attained between the UN and the host government. A good example is in the case of the UN operation in Somalia; as a result of no recognized government in the country, an agreement could not be concluded. The United Nations Mission in Western Sahara (MINURSO) 1991 is another case study where an agreement was not initially initiated. There was no legal agreement with Morocco until one year after the deployment of forces.

<sup>73</sup> Art 46 to 49 serve as the jurisdictional provisions of the Model SOFA. The Statute of the International Court of Justice in Art 38(b) relates Customary International Law as "a general practice accepted as law"

According to Art 38 of the Statute of the International Court of Justice, for a rule to attain customary international law status, two elements need to be satisfied. First there needs to be for a long period a consistent and widespread State practice affirming that rule. Second, this practice should be pursued out of a sense of legal obligation (*opinio juris*); only if both elements are satisfied a new rule of customary international law is created.<sup>74</sup>

The question to be answered is whether the UN Model SOFA meet all the requirements outlined in Art.38 of the ICJ Statute to be considered as customary law. First of all, the UN and host states have concluded several bilateral agreements regarding the jurisdictional provisions of military peacekeeping personnel using the provisions of the Model SOFA. The practice of bilateral agreements between the UN and host states can be traced far back to the 1990s, and it supports the claim that the application of the Model SOFA is now a state practice. Also, the consistent practice of exclusive jurisdiction of the TCCs over the actions of their military contingents is yet another instance of consistent state practice. Both aforementioned practices strengthen the claim that the Model SOFA has the status of customary law. These procedures give ground for the Model SOFA to have gained the status of customary law or is in the process of crystalizing as such.<sup>75</sup>

However, while the Model SOFA reflects a consistent and widespread state practice, it does not necessarily satisfy the requirement of *opinio juris*. Specifically, it is worth noting that the Model SOFA can be subjected to modifications at all times at the request of the parties involved in a conflict.<sup>76</sup> This act denotes that states do not feel obliged to abide by the provisions set out in the Model SOFA and hence may make specific reservations. If states and parties to a conflict have the power to make modifications to the clauses of the Model SOFA, then it cannot be viewed as customary law per Art. 38 ICJ Statute because the core requirement of *opinio juris* is not met.

Over time scholars have come up with several justifiable reasons as to whether or not the Model SOFA is customary law; nonetheless, having to deal with two opposing views on this

---

<sup>74</sup> North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), I.C.J. Reports 1969, p.3, International Court of Justice (ICJ), 20 February 1969. Available at: <https://www.refworld.org/cases,ICJ,50645e9d2.html>

<sup>75</sup> Article 7 quinquies, Exercise of jurisdiction by the government. The military members of the national contingent provided by the government are subject to the government's exclusive jurisdiction in regard to the crimes and offences committed by them while away on mission. Pending the period of a concluded SOFA agreement it is beneficial for both the UN and the TCC to adhere to the provisions of the Model SOFA as it outlines the immunities and privileges of the peacekeeping force which are of core importance for any successful peacekeeping mission.

<sup>76</sup> Model Status-of-forces agreement for peacekeeping operations, Report of the Secretary-General. UNGA Doc. A/45/594

topic, none has been generally accepted. Based on the unresolved status of the Model SOFA and the continuous clash of viewpoints, the UN General Assembly and the Security Council indicated their stance on the matter.

The General Assembly stance according to its resolution 52/12 in regard to the preservation of peace, security and disarmament are:

"while establishing a peacekeeping operation, the General Assembly recommends the Security Council to adopt a prescribed time frame to conclude a SOFA agreement between the host state and the UN to ensure the effectiveness of the mission as well as a rapid response to a conflict."

The GA resolution further states that:

"pending the conclusion of the SOFA Agreement between the UN and the host state, the Model SOFA should be applied and adhered to in the interim."<sup>77</sup>

However, an important fact to take into consideration is that the General Assembly only offers recommendations, and such a recommendation is not legally binding on the member states. Therefore, the member states can decide to follow the advice of the General Assembly and apply the Model SOFA as an interim agreement or choose to disregard it.

The UN Security Council took a similar stance as the General Assembly. The Security Council has issued several resolutions which assert that the Model SOFA is applied and adhered to in the interim pending a finalized SOFA agreement between the UN and the host government.

A pertinent example of such resolution is the UNSC Resolution 1528 which authorized the initiation of a UN operation in Côte d'Ivoire (UNOCI). Acting under Chapter VII of the UN Charter, the Security Council requests the Secretary-General to transfer authority from MINUCI and the ECOWAS forces to the UNOCI. The Security Council further requests that the Secretary-General and the host government conclude a SOFA agreement within thirty days of the adoption of the present resolution. Pending the conclusion of the mission-specific SOFA, the Security Council affirms that the Model SOFA shall apply in all its provisions.<sup>78</sup> Consequentially, unlike the recommendations provided by the General Assembly, the

---

<sup>77</sup>RESOLUTION 52/12B., Resolution adopted by the General Assembly, {without reference to a main committee (A/52/L.72/REV.1)}, Renewing the United Nations: a programme for reform, 9<sup>th</sup> January 1998

<sup>78</sup> United Nations Security Council Resolution 1528 (2004), UNSCR: Search engine for the United Nations Security Council Resolutions, available at: <http://unscr.com/en/resolutions/1528>

resolutions adopted by the Security Council are binding on all member states as stated in Art.25 of the Charter.<sup>79</sup>

Despite the possibility that the recommendations and resolutions adopted by the Security Council and the General Assembly may have endorsed the Status of the Model SOFA as customary law, it also creates loopholes on the matter and raises more questions. One may assume that since the Security Council has the power to affirm the Model SOFA as an interim agreement between the UN and the host states which is binding on all member states, the Model SOFA therefore automatically is granted the status of customary law. The question then remains, does this act honestly acknowledge the Model SOFA as customary law? - Taking a different viewpoint, we can say that states which execute specific actions as a duty to adhere to the request of the Security Council because they are obliged to do so, is not the same as to when states act in a precise manner out of a sense of legal obligation. Therefore, the requirement of *opinio juris* is in question - one does not fully know when states apply the Model SOFA out of the free will and sense of legal obligation or as a result of the request from the Security Council.

Another example of discrepancy in regard to the status of the Model SOFA as customary international law is the exclusive jurisdiction of the TCC over their national contingents. The fact that states engage in the frequent practice of the state waiver theory has paved the way for a rule of customary law which on the one hand supports the claim that the Model SOFA has customary international law status. Nonetheless, these differing conclusions are groundless as one cannot determine if the action of waiving jurisdiction is done discretionary or mandatory. Hence, the expression of *opinio juris* is once again refuted.<sup>80</sup>

As a result of uncertainty regarding the element of *opinio juris*, for this academic work, I maintain that at this moment, the Model SOFA is not equivalent to customary international law. In the absence of a mission-specific SOFA, the jurisdictional provisions of the Model SOFA are not applicable. An alternative is the application of humanitarian international law which will be discussed in subsequent chapters.

---

<sup>79</sup> Art.25 of the Charter of the United Nations: Members of the United Nations agree and accept to carry out the decisions of the Security Council in accordance to the Charter.

<sup>80</sup> WORSTER W. THOMAS, Immunities of United Nations Peacekeepers in the Absence of a Status of Forces Agreement, (May 20, 2009). *Revue de Droit Militaire et de Droit de la Guerre*, Vol. 47, 2008 Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1407529](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1407529) pp.302-307

### 3.2 Memorandum of Understanding (MoU)

#### a) Introduction

As noted in the previous subchapter on "Troop Contributing Countries", it has already been established that the UN does not have a standing reserve force and is therefore dependant on member states to provide them with peacekeeping personnel. Be that as it may, the UN has to coalesce resources from as many members states as possible. After the UN has successfully secured a member-States participation in the PKO, it enters into a formal agreement with that State which is known as Memorandum of Understanding (MoU).<sup>81</sup>

Quintessential, a Memorandum of Understanding often termed as a "gentleman's agreement" is a formal document describing bilateral or multilateral agreements between states and international organisations. It records the mutual commitments of both parties involved and expresses their collective line of action towards the same goal.<sup>82</sup>

In regard to UN peacekeeping operations, the MoU is the formal agreement that regulates the interrelation between the UN and TCC's. The MoU sets out the administrative, logistical and financial details concerning the member states contribution of personnel, equipment and services. Most importantly, the MoU elucidates the responsibilities of the UN, and the contributing country in relations to discipline, conduct, investigation and accountability. For the essence of this academic work, the latter elements are of core importance as they play a determinant factor in cases of misconduct and SEA allegations.

Before tackling SEA allegations by peacekeeping personnel and accountability of the contributing country, it is vital to understand the different types of MoU. The legal status of the military contingents and police units is not the same, leading to separate MoU, each one designed to address the particularities of the different types of peacekeeping personnel.<sup>83</sup>

Similar to the Model SOFA, the Secretary-General drafted in 1990, upon the request of the UNGA a model agreement between the UN and member states contributing personnel to the peacekeeping operation. In 1991, the model agreement was finalized and further referred to as the "Troop Contribution Agreement".<sup>84</sup>

---

<sup>81</sup> The agreement between the UN and a contributing country was initially referred to as the "Troop Contribution Agreement". However, the name changed in 1997 to "Memorandum of Understanding.

<sup>82</sup> ANTHONY AUST, *Modern Treaty Law and Practice* (3<sup>rd</sup> ed.), Cambridge: Cambridge University Press, 2013, p.26

<sup>83</sup> UNGA DOC. A/61/494, Note by the Secretary-General, 'Revised draft model memorandum of understanding between the United Nations and [participating State] contributing resources to [the United Nations Peacekeeping Operation]', 3<sup>rd</sup> October 2006

<sup>84</sup> UNGA DOC. A/46/185, Report of the Secretary-General, 'Comprehensive review of the whole question of peace-keeping operations in all their aspect, Model agreement between the United Nations and Member States contributing personnel and equipment to United Nations peace-keeping operations', 23<sup>rd</sup> May 1991

Subsequently, in 1996 the model agreement was rewritten, and in 1997 its name changed from "Troop Contribution Agreement" to "Memorandum of Understanding". However, though the model agreement got a new name, its content did not undergo any changes. Following the numerous reports of SEA allegations by peacekeeping personnel in the early 2000s and the controversies it sparked, the UN took innumerable actions to tackle sexual misconduct by its peacekeepers.<sup>85</sup>

One prominent action the UN took to address the controversy of SEA allegations was the amendment of the 1997 version of the MoU. The General Assembly endorsed these amendments in its resolution 61/267B<sup>86</sup> in 2007, and this is up until today referred to as the Revised draft model memorandum of understanding.

#### b) The 2007 Revised Model Memorandum of Understanding

The 2007 revised model of MoU enshrines a code of conduct for peacekeeping personnel and confronts the issue of sexual misconduct. The revised MoU brought about several changes; however, two immediate changes pave the way for the proper criminal accountability of military peacekeepers as well as the responsibilities of TCCs.<sup>87</sup>

The first prominent change is highlighted in Annex H of the revised MoU. Annex H incorporates the recommendations made by the Adviser to the Secretary-General on sexual exploitation and abuse by UN peacekeeping personnel (hereafter "The Adviser") as well as the Special Committee on Peacekeeping Operations and finally endorsed by the General Assembly in its resolution 59/300<sup>88</sup>, that the UN standard of conduct as referred to the various MoU be explicitly applied to all members of national contingents. This standard of conduct comprises three elements:

1. Ten Rules - Code of Personal Conduct for Blue Helmets
2. We are United Nations Peacekeepers
3. Prohibitions on sexual exploitation and abuse

These elements are mainly directed at peacekeepers and aim to guide the behaviour of peacekeeping personnel following the UN standards and principles strictly to its letters.<sup>89</sup>

---

<sup>85</sup> Ibid. 58, Chapter 3: Agreements between the United Nations and Contributing States, p.51

<sup>86</sup> UN DOC. 61/267B, Resolution adopted by the General Assembly, 'Comprehensive review of a strategy to eliminate future sexual exploitation and abuse in UN peacekeeping operations', 24<sup>th</sup> August 2007, Operative part 2. Available at: <https://conduct.unmissions.org/sites/default/files/keydoc10.pdf>

<sup>87</sup> The present version of the 2007 Model MoU can be found in chapter 9 of the Contingent-Owned Equipment (COE) Manual. General Assembly, Manual on Policies and Procedures Concerning the Reimbursement and Control of COE Troop/Police Contributors. UN DOC. A/C.5/69/18

<sup>88</sup> Commentary, Revised draft model MoU between the United Nations and participating state

<sup>89</sup> Revised draft model MoU

Article 7 bis of the Revised Model MoU gives prominence to the code of conduct by peacekeeping personnel as it urges governments to ensure that members of their national contingents are familiar with and fully understand the UN standards of conduct. Also, governments are obliged to take extra steps by ensuring that all members of its contingent receive sufficient and effective training pre-deployment. It is not enough for governments to only train members of its contingent with the UN standard of conduct, therefore Art. 7 bis further stipulate that governments should ensure that the UN standard of conduct is made binding under their national laws or relevant disciplinary code for all members of national contingents.<sup>90</sup>

The second prominent change is highlighted in "Article 7 ter" of the Revised Model MoU. Art. 7 ter adds a distinct provision regarding the responsibility of the troop-contributing governments as well as the disciplinary action in respect to misconduct by peacekeeping personnel. According to Art. 7 ter, the government has the full authority for all disciplinary action regarding all members of its contingent deployed as military components to a UN peacekeeping mission. During a peacekeeping mission, the Commander of its national contingent is vested with the authority to take disciplinary actions, maintain good order among all members of the national contingent and in particular consult with the Force Commander of the UN peacekeeping mission on matters concerning the maintenance of discipline and compliance with UN standards of conduct as well as the general respect for local laws and regulations.<sup>91</sup>

Article "7 quarter" also plays a vital role in the accountability of peacekeeping personnel regarding the crimes they committed. This article describes the UN investigations and procedures to be followed in cases of misconduct.

Article 7 quarter paragraph 1 states:

"In the event that the United Nations has reasonable grounds to suspect that any members of the Government's national contingent have committed an act of misconduct, the United Nations shall without delay inform the Government and may, as appropriate, initiate an administrative investigation into the matter (hereafter a "United Nations investigation"). It is understood in this connection that any such investigation will be

---

<sup>90</sup> Article 7 bis United Nations Standard, Revised draft model MoU

<sup>91</sup> Article 7 ter Discipline, Revised draft model MoU



conducted by the appropriate United Nations investigative office, including the United Nations Office of Internal Oversight Services, following the rules of the Organization."

Accordingly, the contingent commander has the responsibility to cooperate with the UN investigative office and provide all necessary information and documentation regarding a member or members from his contingent under investigation and make themselves available for interview. The UN has the authority to repatriate any contingent commander that fails to cooperate with the UN investigative office during an investigation. Furthermore, the UN also has the authority to repatriate any contingent commander that failed to report allegations of misconduct to the UN Force Commander.<sup>92</sup>

In the same vein, "Article 7 quinquies" is equally essential to the allegations of misconduct as it deals with the exclusive exercise of jurisdiction by the troop-contributing countries. Though the members of national contingent are immune from any external prosecution for the crimes they commit while deployed on a mission, their governments have an obligation to ensure that they exercise disciplinary jurisdiction regarding the acts of misconduct committed by any member of their contingent.<sup>93</sup>

Furthermore, the investigation into the misconduct by peacekeeping personnel is not left to the UN alone. According to "Article 7 Sexiens", governments are obliged to inform the UN of any misconduct its national contingents may have committed.<sup>94</sup> The final element concerning the misconduct by peacekeeping personnel is accountability as stipulated in "Article 7 Septiens". If an investigation conducted by the UN or the authorities of the government deduce misconduct, the government should forward the case to the appropriate authorities for prosecution or disciplinary action.<sup>95</sup>

#### c) Conclusion of the Memorandum of Understanding

The Memorandum of Understanding remains an essential document used in governing a UN peacekeeping operation. As discussed above, the revised model MoU includes provisions that act as a check and balance in regulating criminal conduct and holding all parties accountable. Although the revised model seems to be a silver lining to the problems of misconduct by peacekeeping personnel, it does have its shortcomings.

---

<sup>92</sup> Article 7 quarter, United Nations Investigations, Revised draft model MoU

<sup>93</sup> Article 7 quinquies, Exercise of Jurisdiction by the Government, Revised draft model MoU

<sup>94</sup> Article 7 Sexiens, Investigation by the Government, Revised draft model MoU

<sup>95</sup> Article 7 septiens, Accountability, Revised draft model MoU

All these new provisions and commitments are not legally binding on states and are therefore not followed by any sanctions. The effect of no sanctions means that contributing countries can decide to not exercise their jurisdiction, which ultimately proves to be a problem concerning the criminal accountability of military peacekeepers. The model MoU still lacks the explicit assurance that troop-contributing countries will hold military peacekeepers of their national contingent charged with misconduct criminally accountable.

Another shortcoming of the model MoU is that it does not allow for the UN to follow up on the prosecution process of an offender, this might give room to lackadaisical attitudes from the part of the governments as they might not be willing to prosecute their national contingents.

## **II. CRIMINAL MISCONDUCT**

Allegations of criminal misconduct by peacekeepers is an extensive subject matter and therefore needs to be comprehensively approached. This chapter aims to provide a full understanding of the topic and will be divided into two parts. In the first part, the concept of criminal misconduct and what is to be understood by this concept will be analysed, and some statistics on the underreporting of criminal misconduct incidents by the victims will be presented. Moreover, this part will focus on why the misconduct by peacekeepers is seen to be extremely troublesome and problematic for both the host state and the UN.

In the second part, a series of factors that contribute to the criminal misconduct by peacekeepers will be assessed. For instance, it will be explored whether peacekeepers' perpetration of SEA is – at least partially – the result of the externalisation of the norms they have grown accustomed to in their home country. Furthermore, relevant conditions in the host country as a contributing factor will be analysed, with a particular emphasis to domestic laws and social norms therein. The purpose is to assess whether there is a link between SEAs and the existence of a “rape culture” in the host state, as well as to evaluate how the way sexual allegations are approached under local laws impacts on the occurrence of SEA by peacekeepers.

### **1. WHAT IS TO BE UNDERSTOOD AS CRIMINAL CONDUCT**

The Conduct and Discipline Teams (hereafter: CDT)<sup>96</sup> of UN PKOs defines misconduct differently for the different categories of peacekeeping personnel; this means depending on the category a peacekeeper belongs to and the severity of his offence, the consequences vary. For further clarification, both the UN Charter and the policy on accountability for conduct and discipline in field missions cover conduct for all UN personnel regardless of the category they belong. However, specific documents guide the conduct of civilian personnel as well as the uniformed personnel.

For example, the UNSG Bulletin on status, basic rights and duties of UN staff and the UNSG Bulletin on addressing discrimination, harassment and abuse of authority both specifically

---

<sup>96</sup> CDTs are based in peacekeeping missions all over the world. The core responsibility of the CDTs is to advise the mission heads on conduct and discipline issues involving all categories of personnel in a UN field mission including SEA allegations. CDTs further provide training for peacekeeping personnel on all UN standard of conducts as well as draft and implement strategies designed to deter violations of local laws and UN rules and regulations.

address the conduct for civilian personnel. For uniformed personnel, the ten rules/code of personal conduct for blue helmets, the revised draft of the MoU among others outline the code of conduct expected from uniformed personnel in accordance to the UN standards.

The three principles of the UN standards of conduct according to the Core Pre-deployment Training Materials (hereafter: CPTM) apply to the different definitions of misconduct. The three principles of the UN standard of conduct include;

- Highest standard of efficiency, competency and integrity;
- Zero tolerance policy on sexual exploitation and abuse;
- Accountability of those in command or authority who fail to enforce the standards of conduct.<sup>97</sup>

The term misconduct for civilian personnel is defined as "the failure by a staff member to comply with his or her obligations under UN Charter, staff rules and regulations as well as relevant administrative issuances."<sup>98</sup> On the other hand, the definition of misconduct for members of national contingents and military staff officers diverges considerably from the above one, as it encompasses "any act or omission that is a violation of UN standards of conduct, mission-specific rules and regulations or the obligations towards national and local laws following the SOFA agreement where the impact is outside the national contingent." Furthermore, according to the definition by the Conduct and Discipline Unit, misconduct is divided into two categories:

- Category I: "Serious Misconduct offences" including any criminal act that results in a grave loss, havoc or injury to an individual or a mission. Sexual exploitation and abuse are ranked in this category.
- Category II: "Misconduct offences" including acts such as theft and fraud, traffic-related incidents, sexual or other work-related harassments.<sup>99</sup>

From the above, one can observe that criminal misconduct by peacekeeping personnel is not limited to sexual exploitation and abuse, but it encompasses all sorts of crimes ranging from torture, weapon trading, gold smuggling or murdering of detainees to firing at unarmed

---

<sup>97</sup> UN DPKO/DFS CPTM Version 2017., The Core Pre-deployment Training Materials CPTM entails the essential knowledge required by all peacekeeping personnel to enable them function effectively in a peacekeeping operation. These materials should be used as a core resource for every UN pre-deployment training

<sup>98</sup> UN Core Pre-Deployment Training Materials, Module 3: Individual Peacekeeping Personnel, Conduct and Discipline, p.6

<sup>99</sup> The Centre for Military Ethics, King's College London, Ethics in Peace Operations, Peace Operations Training Institute, 2019, Lesson 1, p.19-20

civilians.<sup>100</sup> Though peacekeepers partake in these criminal misdeeds, the most accusations raised against peacekeepers relates to crimes involving sexual exploitation and abuse. For that purpose, our subsequent analysis will lay more emphasis on the definition of misconduct outlined for members of national contingents and military staff officers, as well as on category I crimes, namely serious misconduct offences where sexual exploitation and abuse is prevalent.

Due to the numerous allegations of SEA raised against peacekeepers, the UN has undertaken dominant actions to target and tackle SEA by peacekeepers. Importantly, the UN correctly distinguishes between the meaning of "sexual exploitation" and "sexual abuse". More specifically, according to the 2003 Secretary-General Bulletin on Sexual Exploitation and Abuse, sexual exploitation is defined as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another", while sexual abuse is understood as "the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive condition".<sup>101</sup>

Since the inception of the first UN peacekeeping operation (UNTSO) in 1948, up until the most recent mission, criminal misconduct remains prevalent.<sup>102</sup> The accounts of misdeeds by personnel in a UN peace operation has spiked over the years, especially as a result of the rapid mission growth and deployment into desperately poor and chaotic countries.

The peacekeeping operation in Somalia (UNUSOM) in the early 1990s received mass attention as the allegations of criminal misconduct especially sexual exploitation and sexual abuse of women and underage children by peacekeepers peaked at an increasing rate. This is not to suggest that this has been the only or the worst mission in relation to criminal misconduct allegations<sup>103</sup>; it has been, however, one of the earliest peacekeeping operations, where human rights violations and criminal misconduct were not only reported by the victims

---

<sup>100</sup> O'BRIEN MELANIE, Protectors on trial? Prosecuting peacekeepers for war crimes and crimes against humanity in the International Criminal Court, *International Journal of Law Crime and Justice*, 2012, DOI: <https://doi.org/10.1016/j.ijlcj.2012.03.006>

<sup>101</sup> UN DOCUMENT ST/SGB/2003/13., Secretary-General's Bulletin, Special measures for protection from sexual exploitation and sexual abuse, Section 1 Definitions.

<sup>102</sup> WILLIAM J. DURCH, KATHERINE N. ANDREWS, AND MADELINE L. ENGLAND WITH MATTHEW C. WEED., Improving Criminal Accountability in United Nations Peace Operations: Report from the project of rule of law in post-conflict settings future of peace operations program, Stimson Centre Report No.65, Rev. 1, June 2009.

<sup>103</sup> The most awful International Humanitarian violations by peacekeepers were committed by the Dutch troops who formed part of the UNPROFOR. Search Dutch Soul-Searching over Srebrenica – In 2007, the International Court of Justice ruled the 1995 massacre a genocide, where about 8,000 Muslims seeking shelter were killed. This has been described as the worst single atrocity in Europe since WW II.

of the violations themselves, but substantiated on the basis of testimonies by fellow troops and photographic evidence.

For instance, in 1997, a former Belgian paratrooper publicly condemned the members of the Belgian armed forces that served in the multinational task force in Somalia for the grave human rights abuses they committed against Somali citizens. Photographs, released as evidence, showed two soldiers swinging a Somali boy over an open fire and threatening to burn him alive.<sup>104</sup> According to the ex-paratrooper, he acknowledged that such barbaric behaviour was a regular practice in the camp. Graphic evidence further revealed a soldier urinating on the body of an unconscious Somali man lying on the ground.

Similarly, Michele Patruno, an Italian conscript in Somalia contended that during the 1993 peace operation, Italian soldiers engaged in the torture of detainees, handling them with the utmost disrespect for human dignity. Photographs revealed that detainees were subjected to acts of electrocution, to the practice of burning the soles of their feet with cigarettes and other forms of ill-treatment.<sup>105</sup>

The underlying negative consequences of sexual relations in the context of peacekeeping operations will help to further elaborate as to why all forms of sexual relations ought to be criminalized. One of the inevitable consequences of sexual relations between peacekeepers and the local female population is the conception of babies. Peacekeepers are often accused of fathering babies and leaving them behind in the host country.<sup>106</sup> An investigation into the sexual exploitation in the town of Bunia in Congo revealed a high rate of abandoned babies born as a result of peacekeeper - local female sexual relations. The repercussion for the local woman that conceives a "peace baby" is that she is often left to cater for the child alone without any support from the father. Moreover, such children face certain challenges

---

<sup>104</sup> AMNESTY INTERNATIONAL NEWS, Vol.27, No.5, Index Number NWS 21/005/1997, September 1997  
JACKSON N. MAOGOTO, Watching the Watchdogs: Holding the UN Accountable for Violations of International Humanitarian Law by the 'Blue Helmets', *Deakin Law Review*, Vol.5 No.1, 2000, p.52

<sup>105</sup> AMNESTY INTERNATIONAL AI NEWS – September 1997. The allegations brought against the Italian contingents by a former member of the Italian army indicates the level of human rights abuses perpetrated by the Italian force during their stay in Somalia. The photographs that reveal evidence of Italian soldiers torturing detainees was taken by Michele Patruno (ex-Italian soldier) at Johar camp. Patruno avowed that senior officers in charge of the national contingent were present at such incidents. The Italian government launched judicial investigations into the allegations. The Canadian contingent are similarly criticized over their human rights abuses in Somalia. In 1996, the Canadian Airborne Regiment Battle Group battalion (CARBG) was demobilized as a result of the torture and death of a Somali youth, and the soldiers involved faced prosecution.

<sup>106</sup> UN DOCUMENT A/61/841 (hereafter the Bunia Report), Report of the Office of Internal Oversight Services on its investigation into allegations of sexual exploitation and abuse in the Ituri region (Bunia) in the United Nations Organization Mission in the Democratic Republic of the Congo.

themselves, since they are sometimes ostracized from the society due to their different looks compared to the general population.<sup>107</sup>

A Gordian knot concerning "peace babies" is the inability of holding the fathers accountable. The mothers of these babies are rarely aware of the responsible peacekeepers' whereabouts, only retaining his first name or nationality and the period of deployment. Additionally, peacekeepers enjoy UN immunities and privileges extended to them by the UN and are therefore out of reach for prosecution by the courts of the host state; this again creates a loophole in holding peacekeepers accountable.<sup>108</sup>

Past surveys reveal an estimation of approximately 24.500 babies fathered by peacekeepers in Cambodia and about 6.600 children fathered in Liberia,<sup>109</sup> the latter number highlighting that this is not a scourge limited to the earlier UN peace operations, as the UN mission in Liberia was established in 2003. New statistics still reveal that current peacekeeping operations continue to struggle with the phenomenon of peace babies and paternity claims. Specifically, in 2014, a total number of 51 allegations was raised regarding the misconduct of peacekeepers. Out of the 51 allegations raised, 12 were associated with paternity claims, seven of which were the result of sexual exploitation by MINUSTAH personnel, and five by MONUSCO personnel.<sup>110</sup> Similarly, in 2019 out of a total of 80 allegations of sexual exploitation and sexual abuse was brought against UN peacekeepers, 46 concerned paternity claims.<sup>111</sup>

Furthermore, a particular worrisome effect of such sexual relations relates to the wide spread of sexually transmitted diseases (STD), further exacerbating the problem of the high rate of STDs among locals in Southeast Asia or Sub-Saharan Africa countries.<sup>112</sup> For example, during the UN peacekeeping mission in Cambodia, the country experienced a dramatic rise in the incidents of HIV/AIDS. It has been persuasively argued that the widespread phenomenon of sexual relations with – or sexual exploitation by – peacekeepers deployed to Cambodia, played a considerable role in the rise of HIV/AIDS.<sup>113</sup>

---

<sup>107</sup> NDULO MUNA, 2009, pp.29-130

<sup>108</sup> NDULO MUNA, 2009, p.158

<sup>109</sup> NDULO MUNA, 2009, p.157

<sup>110</sup> UN DOCUMENT A/69/779, Reports of Sexual exploitation and abuse in 2014, allegations reported against personnel deployed in peacekeeping operations and special political missions supported by the Department of Field Support

<sup>111</sup> Conduct in UN Field Missions., Statistics on victims and allegations, available at:

<https://conduct.unmissions.org/sea-overview>

<sup>112</sup> KRZYSZTOF KORZENIEWSKI, Sexually Transmitted Infections Among Army Personnel in the Military Environment, In Nancy Malla (ed.), Sexually Transmitted Infections, Croatia, Intech, 2012, pp.167-168

<sup>113</sup> OLIVERA SIMIC, Regulation of Sexual Conduct in UN Peacekeeping Operations, Springer Heidelberg New York Dordrecht, London, 2012, p.37

Over time, the UN has adopted several special measures for fighting SEA by peacekeepers as well as divulging data on the type of allegations, investigations and victims involved. This method aims to name and shame perpetrators as well as their national contingents. According to the 57/306 General Assembly resolution, the Secretary-General as a means of addressing misconduct by peacekeeping personnel has been assigned the task to issue a report concerning SEA by UN peacekeepers annually. These reports provide an overview of the allegations raised, includes information about the UN peacekeepers' alleged crimes, as well as the category of peacekeeping personnel involved in SEA.<sup>114</sup>

The following tables show relevant statistics for the years 2017, 2018 and 2019 regarding the criminal conduct of peacekeeping personnel.

**Table 1.** Information on the total number of allegations reported by year, separating the data by the type of allegation

	2017	2018	2019
Sexual Exploitation	43	35	56
Sexual Abuse	16	16	19
Both	4	5	5
Total	63	56	80

**Table 2.** Information on the total number of allegations reported in the year 2017, separating the data by the type of allegation and category of peacekeeping personnel

2017	Sexual Exploitation	Sexual Abuse	Both	Total
Military	27	10	4	41
Civilian	7	4	-	11
Police	9	2	-	11

<sup>114</sup> UN Document A/RES/57/306., Resolution adopted by the General Assembly, 22<sup>nd</sup> May 2003., UNGA Doc. A/73/744, Report of the Secretary-General, 'Special measures for protection from sexual exploitation and abuse', 14<sup>th</sup> February 2019. Further annual reports from the Secretary-General on the special measures for protection from sexual exploitation and abuse is available at: <https://conduct.unmissions.org/reports-secretary-general-special-measures-protection-sexual-exploitation-and-sexual-abuse>



**Table 3.** Information on the total number of allegations reported in the year 2018, separating the data by the type of allegation and category of peacekeeping personnel

2018	Sexual Exploitation	Sexual Abuse	Both	Total
Military	26	8	5	39
Civilian	5	8	-	13
Police	4	-	-	4

**Table 4.** Information on the total number of allegations reported in the year 2019, separating the data by the type of allegation and category of peacekeeping personnel

2019	Sexual Exploitation	Sexual Abuse	Both	Total
Military	36	10	3	49
Civilian	15	8	2	25
Police	5	1	-	6

Source: All figures are cumulated from the electronic system made available on the Conduct and Discipline in UN field mission website.<sup>115</sup>

The statistical figures of 2017, 2018 and 2019 regarding sexual exploitation and abuse by peacekeepers reveal that a substantial part of the allegations raised involved military personnel. Between 2017 and 2019, out of a total of 199 claims raised against peacekeeping personnel, more than 60% (129 claims) concerned military forces.

### 1.1 Underreporting of Incidents

The above numbers must be taken with a grain of salt since it is widely admitted that sexual violence and assault crimes, whether committed in the context of a peacekeeping operation or not, are generally underreported. In reality, it has been persuasively proven that underreporting of sexual assault and abuse remains one of the most persistent patterns in law enforcement.<sup>116</sup> The reasons for that are manifold: sexual abuse pertains to private matters and is a really personal experience, thus victims of such violations often tend to remain silent

<sup>115</sup> For further up-to-date statistics view: <https://conduct.unmissions.org>

<sup>116</sup> ALLEN W. DAVID, Introduction, 2007, p.623,

and keep the incident to themselves.<sup>117</sup> The impact of sexual violence on its victims is far beyond just physical injuries. The trauma of fright, shame, depression or flashbacks makes it difficult for the victims to come forward.

Consequently, even if in the context of UN peacekeeping, there are several scholarly surveys on SEA' data as well as statistics from the UN itself and other humanitarian watch agencies, it remains questionable whether those statistics accurately reflect the breadth of these reprehensible practices.<sup>118</sup> Respective NGOs stationed in conflict zones corroborate claims of statistics underreporting SEA practices.<sup>119</sup>

There are several additional reasons for the gap between "official statistics" and the level of SEA suggested by research. One of the most predominant reasons and probably the most devastating one for the underreporting of sexual abuse incidents is the fear of stigma and victimization.<sup>120</sup> In some societies, victims of sexual abuse will be called names and shamed and in extreme cases, even ostracized from their community merely for being victims of sexual abuse. Some societies even go as far as subjecting the victims to brutal treatment, like in Darfur, Sudan, where in 2005, the UN emergency relief coordinator noted that the impact of the violent acts of sexual abuse combined with the abusive actions of the Sudanese government left victims completely hopeless.<sup>121</sup>

"Not only do the Sudanese authorities fail to provide adequate physical protection, but they also impede access to treatment. Victims are publicly chastised, and others imprisoned. Unmarried women that became pregnant as a result of sexual assault are treated as criminals, arrested and subjected to violent treatments by the police, thus making them the victims all over again. Survivors of sexual violence, as well as NGO officials providing victim assistance, are harassed and intimidated by the authority."<sup>122</sup>

The detrimental economic impact sexual abuse has on a victim is a further, paramount reason for the underreporting of incidents. In a country like Southern Sudan, many families depend

---

<sup>117</sup> ALLEN, W. DAVID, The Reporting and Underreporting of Rape, *Southern Economic Journal*, Vol.73, No.3, 2007, p.623

<sup>118</sup> SUK CHUN, Sexual Exploitation and Abuse by UN Peacekeepers, *International Peace Research Institute, Oslo, Institute for fredsforskning (PRIO)*, Policy Brief, October 2009

<sup>119</sup> SUK CHUN, The scope of SEA

<sup>120</sup> CORINNA CSÁKY, "No one to turn to", 2008, p.13

<sup>121</sup> O'FLAHERTY, MICHAEL, *The Human Rights Field Operation: Law, Theory and Practice*, Albershot, Hants, England: Ashgate, 2007, p.199

<sup>122</sup> Security Council Presidential Statement reaffirms condemnation of deliberate targeting of civilians in armed conflict, 21 June 2005, UN DOCUMENT SC/8420

significantly on the monetary and material gifts they gain from the female child during a marriage.<sup>123</sup> In such societies, if a female is a victim of sexual abuse, her “value” for marriage is dramatically reduced. In such cases, victims might get little or nothing as dowry as they are viewed as already being “used”.

“The female child is like a trade for us. They are kept in the right manner so that they will marry properly and bring us benefits from the marriage. If your daughter is abused, that means the man has destroyed all your efforts of raising your daughter right, and you return to zero”. (Southern Sudan Adult Woman)<sup>124</sup>

Additionally, in a society where there is a high rate of gender inequalities, and the female child is regarded as a subservient being, reporting of sexual assault cases will be low. In such a patriarchal society, cultural norms and values sometimes tend to endorse acts of sexual violence and at the same time regard them as a regular part of sexual relations leaving the victims dejected.<sup>125</sup>

Another, very disturbing reason for the underreporting of sexual abuse incidents is that many victims do not know their rights or how to lodge a complaint properly.<sup>126</sup> The regulations and the code of conduct of peacekeeping personnel are not always made known to the local population, thereby leaving a majority of the population unaware of what actions are right or wrong. For example, transactional sex or survival sex might be seen as normal behaviour for the local population, as a means to get money or food to support their daily living. Therefore, the need to report such sexual relations might not be warranted. However, following the UN code of conduct and the definition of sexual exploitation outlined in the 2003 Bulletin, it is made clear to UN peacekeeping personnel that any attempted abuse of a position of vulnerability, differential power or trust for sexual purposes is termed as sexual exploitation.<sup>127</sup>

Finally, the lack of competent legal services preventing the proper legal prosecution of the few reported incidents, further contributes to the cause of underreporting of sexual abuse. If the local population notices that legal actions are not taken against the perpetrator, this will inevitably create a lack of faith in the authority of the justice system and will discourage

---

<sup>123</sup> Ibid. 120

<sup>124</sup> Ibid. 120

<sup>125</sup> Ibid. 120

<sup>126</sup> DURCH, ANDRES, AND ENGLAND, *Individual Reluctance to Report Criminal Acts*, June 2009, p.31

<sup>127</sup> 2003 Bulletin, UN DOCUMENT ST/SGB/2003/13

victims from coming forward with their stories as there is lack of justice. Therefore, it is important for victims to gain some sort of reassurance and have the ability to report incidents directly to the mission authority.<sup>128</sup>

In conclusion, an investigation conducted by the OIOS in Haiti and Liberia proves that many incidents of SEA go indeed unreported. Yet, properly reporting of sexual abuse or any other criminal misconduct perpetrated by peacekeeping personnel is fundamental in keeping the local population of the host country safe. If cases of abuses are not reported and communicated through the appropriate channels, then the chances of ending SEA acts are slim to none, since the gap in the accountability of the perpetrators is perpetuated. Ultimately, underreporting risks rendering the problem of abuse insubstantial.<sup>129</sup> Therefore, it is vital not to depend excessively on figures alone regarding allegations of misconduct by peacekeeping personnel but to engage and encourage further personal research to highlight the phenomenon of underreporting and enhance those mechanisms that will ensure increased reporting of such allegations.

## **1.2 Why is Criminal Conduct of UN Peacekeeping Personnel Disturbing?**

First and foremost, the crimes committed by UN peacekeeping personnel constitute a major embarrassment for the Department of Peacekeeping Operations and a slap on the face of the UN as a whole. Criminal conduct of UN peacekeeping personnel does not only affect the UN but is also a tragedy and a betrayal to both the local population and the host country. Such criminal activities can further cripple the already weak security system of the host country and amplify the works of the local organized criminal groups.<sup>130</sup>

For example, during the war in Bosnia-Herzegovina and Kosovo, a predominant criminal activity in the conflict zones was forced prostitution. This had a very negative effect on the host country and the local population especially the female population. During that period, there was a rise in the building of brothels and the abduction of girls that were then forced into prostitution. An investigation into UN peacekeepers misconduct in Bosnia-Herzegovina and Kosovo revealed that UN peacekeepers patronized those businesses by visiting the brothels regularly.<sup>131</sup> Some peacekeepers virtually befriended the owners of these brothels

---

<sup>128</sup> Ibid.120 p.14

<sup>129</sup> CORINNA CSÁKY, “No one to turn to”, 2008, ‘*Why is abuse under-reported*’, p.12

<sup>130</sup> SUK CHUN, ‘*Why should SEA be eradicated*’, 10/2009

<sup>131</sup> OWEN BOWCOTT, Report reveals shame of UN peacekeepers, ‘*sexual abuse by soldiers must be punished*’, The Guardian 25<sup>th</sup> March 2005, available at: <https://www.theguardian.com/world/2005/mar/25/unitednations>

and sometimes even engaged in more than just sexual relations with the girls, facilitating, for instance, their trafficking.<sup>132</sup>

Furthermore, every UN peace operation deployed to a country needs the support of the local population in executing the mission mandate successfully. When peacekeepers turn into the "crime lords", this might spark some rebellion from the enraged population that is seeking revenge, thereby causing unrest in a country that is trying to maintain its peace and stability. Exposed criminal conduct by peacekeepers wrecks the reputation of the UN and directly creates a lack of trust in the workings of the DPKO. The criminal behaviour of these perpetrators equally tarnishes the chances of good-will UN personnel from trying to help people and might create difficulties in establishing future peacekeeping operations in countries in dire need of help.<sup>133</sup>

In short, crimes committed by peacekeepers is like a stab in the back. For many countries, the UN is a beacon of hope; therefore, crimes committed by UN personnel while on a mission are unforgivable and have a long-lasting effect on the local population.

## **2. CONTRIBUTING FACTORS**

If such crimes are so devastating both for the local population and the societal cohesion of the host country, as well as for UN's reputation and the effectiveness of peacekeeping operations, why does SEA persist? Detecting the factors that contribute to the criminal acts of peacekeeper is the first step in solving the problem of misconduct and in better calibrating strategies to ensure the criminal accountability of the peacekeeping personnel. In order to tackle this abominable behaviour from its roots, it is of vital importance to understand what exactly prompts peacekeepers to demean themselves to such heinous criminal acts.

While determining the contributing factors, one has to critically examine the conditions of the host country as well as the norms peacekeepers have grown accustomed to in their home countries. Though these are identified as triggering factors for the peacekeepers' criminal conduct, their presence does not automatically translate into an increased rate of SEA; they merely indicate a higher risk of occurrence.

---

<sup>132</sup> THE WHISTLEBLOWER, 13<sup>th</sup> September 2010, Larysa Kondracki, Romania, Voltage Pictures.

<sup>133</sup> Ibid 127

## 2.1 Conditions of the Host State

In general, peacekeepers are deployed to places that braved civil strife or to places that are still experiencing belligerent actions by the warring parties to restore the peace and stability in the country. In both cases where peacekeepers are deployed, the conditions of the host country during and after civil strife are dreadful: destruction of the social structure, absence of the rule of law, disintegration of families, an impoverished economy, as well as the psychological hardship endured by the local population are all characteristics of such a country.<sup>134</sup> In such circumstances, it is rare to find an adequate and efficient judicial and policing system to protect civilians; hence peacekeepers who possess more power in the host state may want to benefit from the bad condition thereby committing all sorts of atrocities. Moreover, peacekeepers are wealthier than the local population.<sup>135</sup> Therefore, the poor economic condition of the host state and the struggle for daily survival may leave the local population in a vulnerable state at the hands of the peacekeepers who might take advantage of this. With the rate of poverty rising and no access to work opportunities, offering sexual favours to peacekeepers may be the only way for the local female population to survive.<sup>136</sup> Peacekeepers who are aware of this might exploit this by seeking sexual favours, thus leading to appalling situations such as women offering their body for sex in return for as little as a banana or cake. In extreme cases, peacekeepers may even force girls to engage in bestiality in return for ridiculously low amounts such as nine US Dollar.<sup>137</sup>

---

<sup>134</sup> ELIZABETH F. DEFEIS, U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity, *Washington University Global Studies Law Review*, Vol 7, Issue 2, Seton Hall University School of Law, 2008, p.190

<sup>135</sup> Ibid. 131

<sup>136</sup> According to the OIOS – IED Interviews conducted in Haiti, 231 individuals admitted to transactional sex with MINUSTAH Personnel for reasons linked to their survival as a result of a poor economy. For many rural women, hunger, lack of shelter, medication or basic household items were their main trigger to engage in transactional sex.

<sup>137</sup> JASMIN-KIM WESTERNDORF, Discussion Paper: Mapping the Impact of sexual Exploitation and Abuse by Interveners in Peace Operations, ‘Pilot Project Findings’, *La Trobe University*, December 2016, p.3

## 2.2 Externalized Norms by Peacekeepers

A more complex factor explaining peacekeepers' behaviour relates to their own cultural and societal background. More specifically, the question to examine is whether peacekeepers, by engaging in such behaviours, actually externalise the norms that they have grown accustomed to in their home countries. This question is vital while determining the contributing factors of SEA by peacekeepers: how can peacekeepers uphold certain rights such as women's rights if they grew up in a country that ultimately turns a blind eye to these rights?

It is not unusual for a society with gender inequality to devalue women. In every society where there is gender inequality, or a clear manifestation of patriarchy, sexual abuse likely has a higher occurrence rate, mainly because there is a social acceptance of such behaviour and women are merely vulnerable victims in the unfair social strata.<sup>138</sup>

It is here argued that peacekeepers coming from these particular societies are more susceptible to externalise these norms in the country of deployment. Sometimes such peacekeepers have acculturated these norms to such a great extent that they do not see the negative impact it has on a country, especially one not acquainted with gender inequality or abuse as a part of sexual relations.

Data from the UN Misconduct Tracking System (MTS) identifies the perpetrators of SEA in accordance to their nationality.<sup>139</sup> This thesis will analyse the top five TCCs that have the highest number of sexual exploitation and sexual abuse allegations made against them. The thesis will further investigate the gender inequality index (GII), the gender development index (GDI) as well as the women, peace and security (WPS) index of these five countries.

The rankings of the five countries will additionally be analysed following the legal frameworks that these countries have in place to address sexual exploitation and abuse.

According to the MTS, Cameroon, South Africa, Congo (DRC), Congo (the), and Gabon are the top five countries with the highest number of allegations made against their peacekeeping personnel.<sup>140</sup>

---

<sup>138</sup> KARIM AND BEARDSLEY, *Explaining Sexual Exploitation and Abuse in Peacekeeping Missions*, p.102

<sup>139</sup> Conduct in UN field missions. The conduct and discipline website only include allegations of sexual exploitation and sexual abuse by UN peacekeeping personnel and not on Non-UN international forces. Statistics from 2015 onwards is made available on the website. Available at: <https://conduct.unmissions.org/sea-data-introduction>

<sup>140</sup> Ibid. 136



**Table 5.** Number of Allegations separated by the nationality of the implicated uniformed personnel.<sup>141</sup>

Country	Number of Allegations
Cameroon	41
South Africa	35
Congo (DRC)	30
Congo (the)	28
Gabon	18

The top five nationalities perpetrating acts of SEA are incidentally not among the top ten highest-ranking troop-contributing countries to the UN.<sup>142</sup> Moreover, to keep perspective, four of these countries are still regarded as developing countries,<sup>143</sup> while the Democratic Republic of Congo is ranked as part of the least developed countries<sup>144</sup> hence the Human Development Index (HDI) of these countries is relatively low compared to that of other developed countries. A low HDI might, in turn, have a negative impact on gender equality, thus creating an unconducive society for females.

To determine the gender equality of a country and its relationship to the SEA allegations by its peacekeeping personnel, one has first to analyse the gender indicators of that specific country.<sup>145</sup> "Gender indicators reflect the differences and inequalities between men and women cutting across all areas of life",<sup>146</sup> that is, they are an integral part of gender

<sup>141</sup> The statistics from table 5 include information on both sexual exploitation and sexual abuse separated by the nationality of the implicated UN uniformed personnel. For the purpose of this research I have gathered statistics on the SEA allegations from 2015 to 2020

<sup>142</sup> Summary of Troop Contributing Countries by Ranking, "Police, UN Military Experts on Mission, Staff Officers and Troops", As at 28<sup>th</sup> February 2018 Available at:

[https://peacekeeping.un.org/sites/default/files/2\\_country\\_ranking\\_report.pdf](https://peacekeeping.un.org/sites/default/files/2_country_ranking_report.pdf)

<sup>143</sup> Countries are classified according to their level of economic development. Economic and social criteria such as per capita income, life expectancy and literacy rates are used as a classification tool. Developing countries are in between "developed countries" and "less economically developed countries" JUSTIN KUEPPER, The Balance: What is a Developing Country? Available at: <https://www.thebalance.com/what-is-a-developing-country-1978982> and WORLD ECONOMIC SITUATION AND PROSPECTS, Country Classification: Data sources, country classification and aggregation methodology, Annex prepared by the Development Policy and Analysis Division (DPAD) of the Department of Economic and Social Affairs of the United Nations Secretariat (UN/DESA). Available at:

[https://www.un.org/en/development/desa/policy/wesp/wesp\\_current/2014wesp\\_country\\_classification.pdf](https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf)

<sup>144</sup> United Nations Committee for Development Policy, 'List of least developed countries as of December 2018'. Available at: [https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc\\_list.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf)

<sup>145</sup> UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, "Indicators of Gender Equality", 'Conference of European Statistics', Prepared by the Task Force on Indicators of Gender Equality, New York and Geneva, 2015, Chapter 1.

<sup>146</sup> UNITED NATIONS CONFERENCE CENTRE, Bangkok, Thailand, Gender Statistics and Gender Indicators, 'Developing a regional core set of gender statistics and indicators in Asia and the Pacific', November 2013, p.3



mainstreaming. Gender indicators are beneficial tools in holding countries accountable for their commitments of sustaining human rights. Equally, gender indicators reveal the gap between the commitment government of a country has made and the actual reality of that country, thus providing total transparency of a country's human rights situation from a gender perspective.<sup>147</sup> These gender indicators will enable us to discern whether there is a connection between the norms peacekeepers have grown accustomed to in their home country and SEA committed by them in a host country.

**Table 6.** Gender Indicators for Highest Rates of SEA Allegations Per TCC

Country	Number of Allegations Per TCC	Gender Inequality Index (GII) Rank <sup>148</sup>	Gender Development Index (GDI) Rank <sup>149</sup>	Women, Peace and Security Index (WPS) Rank <sup>150</sup>
Cameroon	41	140	141	148
South Africa	35	97	37	66
Congo (DRC)	30	156	147	161
Congo (the)	26	145	112	149
Gabon	18	128	119	124

Data from table six indicates all of the rankings that correlate with GII, GDI and WPS for the five TCCs with the highest number of SEA allegations. On one hand, a higher-ranking position of a country indicates that the index gap between male and female is wider, thus creating an unequal gender environment. While on the other hand, a country with a lower ranking position indicates that the gap between men and women is not immense, thereby creating a more conducive environment for both genders.

It is presumed that the more developed a country is, the ranking of that country across the gender indicators will be low, thereby indicating a smaller gap in gender inequality.

However, referring to the five TCCs with the greatest number of allegations, none of the five

<sup>147</sup> JUSTINA DEMETRIADES, Indicators for Gender Equality and Women's Empowerment, BRIDGE, 2007 Available at: <http://www.oecd.org/dac/gender-development/43041409.pdf>

<sup>148</sup> UNITED NATIONS DEVELOPMENT PROGRAMME, Human Development Reports, Gender Inequality Table, year 2018. Available at: <http://hdr.undp.org/en/content/table-5-gender-inequality-index-gii>

<sup>149</sup> Ibid. 137 Gender Development Index, 2018 statistics

<sup>150</sup> GEORGETOWN INSTITUTE FOR WOMEN, PEACE AND SECURITY, 'Peace Research Institute of Oslo', Statistics cumulated from year 2019 Available at: <https://giwps.georgetown.edu/the-index/>

countries is graded as developed countries. According to the statistics from table six, it is possible to infer that the gap in gender equality is very wide in these countries.

South Africa is the only country out of the five countries that has its ranking below one hundred across all three indices which sets the country at an average ranking. In the case of South Africa, an average ranking indicates a better equality level between male and female in the standard of living, health and literacy. Gabon had a somewhat a higher ranking, while Congo (DRC), Cameroon and Congo (the) have an extremely high ranking across all three indices. The extreme high ranking for the three countries indicates a wide gender gap.

According to the rankings, women fare the worst in Congo (DRC) in all three indices. At first sight, a pattern of correlation between high gender inequality and high prevalence of SEA allegations can be discerned. For instance, Cameroon and Congo (DRC), are two countries that have a consistent ranking which indicates that their high ranking across the gender indices correlates to their high SEA allegations, respectively.

However, these rankings across gender indicators are not enough to determine whether peacekeepers externalize the societal norms of their home country while deployed on a mission. There is ultimately an absence of consistency across the indicators alongside the number of allegations made against those five TCCs. For example, South Africa had the lowest ranking across GII, GDI and WPS in contrast to the other four countries; however, it has the second greatest number of substantiated SEA perpetrated by its peacekeeping personnel. Therefore, in the case of South Africa, there is no way possible to comprehensibly determine if SEA allegations indeed correlate to the country's gender equality.

Furthermore, some countries have a much higher ranking across all indices compared to Cameroon and Congo (DRC), yet they are not recorded as alleged SEA perpetrators in the MTS database. For example, both Yemen and Cote d'Ivoire rank at a higher position than Congo (DRC) across the gender indices which indicates a much more significant gap in gender equality but both countries have no SEA allegations made against their peacekeeping personnel. Thus, while one could assume that since both countries do not value gender equality, there will be an increased rate of SEA perpetrated by their deployed peacekeeping personnel, this is not the case.

Consequently, additional variables must be taken into account. For example, a further angle to help understand the norms surrounding SEA and help determine whether peacekeepers project these norms is through a cross-country analysis of various legal frameworks that address violence against women.

**Table 7.** Cross Country Analysis of Legal Frameworks and Female Involvement

Legal Framework	Cameroon	South Africa	Congo (DRC)	Congo (the)	Gabon
Rome Statute	NO	YES	YES	YES	YES
CRC	YES	YES	YES	YES	YES
CEDAW	YES	YES	YES	YES	YES
ACRWC	YES	YES	NO	YES	YES
Criminalization of Spousal Rape	NO	YES	NO	YES	YES
Laws against Sexual Harassment	YES	YES	YES	YES	NO
Share of women in Parliament <sup>151</sup>	31%	46%	10%	11%	18%

Findings from Table 7 indicate that the countries mentioned above seem to be faring well in terms of gender equality. As a matter of fact, these top perpetrators of SEA allegations have the most relevant laws in place to adequately address violence against women and strictly prohibit such crimes. Nevertheless, these countries remain with the highest number of SEA allegations.

Yet, a more detailed analysis reveals some interesting conclusions. All of the five countries have signed and ratified the CRC and CEDAW, yet two out of these countries do not criminalise spousal rape. Such a choice seems to defy the main purpose of CEDAW as the primary legal document on women equality, which intends to protect women against sexual and gender-based violence (GBV).<sup>152</sup> This observation showcases that the aforementioned countries only sign and ratify these legal frameworks for certain other reasons, such as to maintain their political, social and economic status in the international sphere, to divert

<sup>151</sup> THE WORLD BANK, Proportion of seats held by women in national parliaments (%) as of 2019. Available at: <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS>

<sup>152</sup> UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, Convention on the Elimination of All Forms of Discrimination against Women, New York 18<sup>th</sup> December 1979, Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> and CEDAW: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

international pressure, as well as to display a "pro-human rights" gesture. In other words, signing and ratifying a treaty is not enough for it to have the full effect it intends to have. Contracting states need to take further steps and fully incorporate the articles of each convention into their national legislation of the country which is not entirely the case for the five countries above.

For example, 50% of women have experienced sexual violence in Congo (DRC); in these cases, the women's abusers are their husbands. Yet, according to DRC's Family Code, it stipulates that a woman must first acquire her husbands' permission to gain access to judicial institutions in the country. Moreover, spousal rape is not regarded as a prosecutable offence as customs do not recognise spousal rape as any different from sexual and romantic relations.<sup>153</sup> How then can a woman gain proper justice, a country like Congo (DRC) when spousal rape is not criminalised?

The failure of criminalising spousal rape in Congo (DRC) as well as in Cameroon is bewildering as both countries are state parties to the CEDAW and are legally bound to incorporate the articles of the convention into their national legislations. Since both Congo (DRC) and Cameroon have failed to do so, one can see the irony in the ratification of the CEDAW. Thus, the ratification of the aforementioned conventions is a relevant indicator for gender equality. It shows the level of commitment of a state towards not only promoting gender equality but as well as protecting the vulnerable female population from all form of abuse.

Another interesting factor worth taking into account is the percentage of female representation in parliament. Though gender balancing in politics is becoming more mainstream in today's societies, statistics reveal that not all countries feel the need to involve women in conduct of politics. Statistics derived from table 7 shows that only Cameroon and South Africa have a high percentage of female participation in parliament, while the remaining three countries are lagging behind with a share of women in parliament clearly below 20%. For example, the share of women in parliament in Gabon is 18%. In those countries' women are viewed as a property of their husbands and barely ever get a seat at the decision table.<sup>154</sup>

---

<sup>153</sup> CANADA: IMMIGRATION AND REFUGEE BOARD OF CANADA, UNHCR, Democratic Republic of the Congo: Domestic and sexual violence, including legislation, state protection and services available to victims (2006 – March 2012), 17<sup>th</sup> April 2012, COD104022. E. Available at: <https://www.refworld.org/docid/4f9e5e532.html>

<sup>154</sup> UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA, Country Profile Gabon, 2016, p.18

In conclusion, the figures from table 6 and 7 did not provide conclusive findings on whether peacekeepers externalize societal norms that they are accustomed to from their home country. However, the analysis did show a certain relationship between the gender inequality of a TCC and its SEA allegations.

It is evident that SEA is regarded as a tactical tool of warfare, and since women are prone to be seen in a negative light, they thereby tend to be on the receiving end of warfare SEA. Home cultures that do not respect the rights of women play a significant role in normalizing SEA. As seen in Table 7, all of the countries are parties to crucial human rights legal frameworks; they encounter, however, serious delays in implementing them. Consequently, how can a soldier that has grown up in a country that practices gender inequality act any different when deployed on a UN mission?

Peacekeepers from countries like Congo (DRC) and Cameroon which have ratified the CEDAW though without criminalizing spousal domestic violence, may think that the UN functions similarly regardless of their pre-deployment training. These peacekeepers are used to witnessing domestic violence cases go unpunished in their home countries since it is the norm, therefore behaving any way different from what they are accustomed to will be abnormal for them. This way of thinking by peacekeepers is simply because life in their TCC's is all they have ever known.<sup>155</sup>

Furthermore, the immunity that these peacekeepers enjoy as well as the complication in the prosecution of criminal offences only further boosts the confidence of these perpetrators. It is to this “culture of impunity” that we will dedicate the next part.

---

<sup>155</sup> SAFIYA NANJI, *Sexual Exploitation and Abuse by UN Peacekeeping Personnel: The Impact of Troop Contributing Countries Societal Norms*, Master Thesis submitted to Columbia University Graduate School of Arts and Sciences, Human Right Studies Master of Arts, February 2018, pp.27-47

### **III. HOLDING MILITARY PEACEKEEPERS ACCOUNTABLE**

This chapter of the thesis is of core importance in examining how justice can be provided for the victims and whether military peacekeepers can be held accountable and properly prosecuted for SEA crimes committed during their deployment on a UN peace operation. The primary purpose of this chapter is to investigate how peacekeepers can be brought to justice. Various sets of laws will be analysed, and further examination will determine which is the most appropriate avenue for holding peacekeepers accountable. Since the prosecution of peacekeepers is a complicated topic, this chapter will be divided into three parts for a better analysis.

Part one will analyse the application of the laws of the host state. As it will be discovered, their application is extremely difficult as a result of the waiver of jurisdiction by the host state. Part two will examine the laws of the TCC's and determine to what extent these laws can be applied to hold nationals fully accountable for the crimes committed as peacekeepers. Part Three will examine whether military peacekeepers can be prosecuted through international humanitarian laws and which set of IHL is the most appropriate for that purpose. The chapter will end with concluding remarks on the criminal accountability of peacekeepers deployed on a UN peace operation.

#### **1. Host State Jurisdiction**

Every sovereign state has territorial jurisdiction, which implies automatic jurisdiction over all people and activities within its territory.<sup>156</sup> In theory, territorial jurisdiction can be very useful in holding military peacekeepers accountable for crimes committed during deployment, as the host state can apply its laws in order to investigate and prosecute the perpetrators. This act implies that the host state undertakes all the power, that includes both investigation and prosecution.

However, this is not very feasible in practice as a result of the consistent waiver of jurisdiction by the host state regarding criminal conduct by the military peacekeepers.<sup>157</sup>

---

<sup>156</sup> HENRY G. SCHERMERS, NIELS M. BLOKKER, *International Institutional Law: Unity Within Diversity*, Sixth Revised Edition, Leiden Boston, 2018, p.6

<sup>157</sup> OPERATION OF ARTICLE VII, NATO STATUS OF FORCES TREATY, Hearings before a subcommittee of the committee on armed services, United States Government Printing Office Washington 1955, pp.10-12

As mentioned previously, SOFAs, namely the agreements between the UN and host states, provide for the exclusive criminal jurisdiction of TCCs over their nationals participating in UN peacekeeping military contingents. As a result of waiving jurisdiction, the host state can at no time take legal actions against the military peacekeepers for crimes they committed while deployed.

### **1.1 Waiver of Jurisdiction**

It is evident that waiving jurisdiction and the resulting immunity granted to troops deployed on the territory of a host state are pivotal impediments for holding military peacekeepers accountable. One has to understand the rationale behind the scope of relinquishing jurisdiction and determine whether the ensuing immunity is imperative bearing in mind the negative consequences of excess immunity.

According to international law, it is conventional for a foreign force to be immune from the jurisdiction of a state as long as it has obtained the required consent from that host state. This rule is derived from the international law principle *maxim-par in parem non habet imperium*, which means that all states are equals and therefore not one state has power over another.<sup>158</sup> However, this orthodox principle of granting immunity to foreign forces as a result of their military status has certain underlying deliberations. It is well established that all sovereign states have equality, thus making the armed force of each sovereign state automatically immune from the jurisdiction of the host state. However, the theory of "state waiver" endorsed by jurisprudence contends the conservative principle of automatic immunity granted to foreign forces. As a matter of fact, state waiver theory asserts that foreign troops are granted immunity solely through the act of waiving jurisdiction by the host state and not as a result of their status as a military force.<sup>159</sup>

### **1.2 Rationale of Immunity from Host State Jurisdiction**

To reiterate, a sovereign state has absolute jurisdiction over all persons presents on its territory: that includes peacekeeping forces as well as diplomats. The state's jurisdiction is, however, constraints by the fact that some foreign personnel enjoys functional immunity.

---

<sup>158</sup> LASSA FRANCIS OPPENHEIM, *International Law, A Treatise*, Vol. 1 (2<sup>nd</sup> edition), Longmans, Green and Company, 1912, pp.430-461

<sup>159</sup> WORSTER W. THOMAS, *Granting Immunity and Waiving Jurisdiction*, pp.283-307

According to the doctrine of functional necessity, immunity is granted to certain personnel only when it is functionally necessary to enable them and protect the performance of their duties without any hindrance from the host state.<sup>160</sup>

International law confers the immunities attached to the status of an office on certain state officials or forces. However, the immunity granted is not the same for all persons; it depends specifically on the person's status, the requirements of the assigned job and the objectives of the immunity. For example, a Head of State is granted a different type of immunity compared to a diplomat or a peacekeeper; this is because his or her job requirements are entirely different from the other two officials.<sup>161</sup>

Many scholars have debated the different types and theories of immunity. Over time, three theories have developed which are consequential in the immunity granted to armed forces. These theories expound to what extent a sending state should retain jurisdiction over its armed forces in the territory of a host state, as well as clarify how far the host state can exercise authority over foreign troops. The three theories are; the theory of absolute immunity; the theory of concurrent jurisdiction; and the theory of qualified immunity.<sup>162</sup>

Just like its name, the theory of absolute immunity gives the sending state the right to exercise unlimited jurisdiction over its forces both in criminal matters as well as with regard to certain civil cases. The underlying assumption of this theory is that any other jurisdiction apart from that of sending/home state would interfere with the efficient discipline and command of the armed force. The theory of concurrent jurisdiction asserts, on its parts, that both the sending state and the host state are entitled to jurisdiction. For example, in the case of a criminal offence, the sending state is entitled to jurisdiction. However, if the crime committed is also an offence against the laws of the host state, then the latter can simultaneously exercise authority with the courts of the sending state.<sup>163</sup> This system was a common practice during the second world war.

The theory of qualified immunity takes a different approach. According to this theory, the sending states retains jurisdiction over the criminal conduct of its national contingents while on duty and over other clearly defined cases such as offences that affect the entire force or part of its members. This theory does not give the sending state the authority to extent its

---

<sup>160</sup> GILL TERRY D AND DIETER FLECK (eds.), *The Handbook of the International Law of Military Operations*, 2<sup>nd</sup> ed. Oxford: Oxford University Press, 2015, p.111

<sup>161</sup> *Ibid.* 155

<sup>162</sup> R. BURKE, p.79

<sup>163</sup> KIMBERLY C. PRIEST-HAMILTON, Who Really Should Have Exercised Jurisdiction over the Military Pilots Implicated in the 1998 Italy Gondola Accident, *Journal of Air Law and Commerce*, Vol. 65, Issue 3, Art.9, 2000, p.614



jurisdiction in matters pertaining to the public system of the host state. The theory of qualified immunity is a reflection of the current trend in state practices, and it equally strikes a balance between the theories of absolute immunity and concurrent jurisdiction.<sup>164</sup>

In practice, in the case of a UN peacekeeping operation, the TCC's retain exclusive jurisdiction over all crimes committed by their military peacekeepers without any restrictions. The UN SOFA grants absolute immunity to military peacekeepers from the jurisdiction of the host state.<sup>165</sup> The question then remains why do military peacekeepers enjoy absolute immunity as ascribed in the SOFA even when it is against the current trend of international law as absolute immunity is now considered as unnecessary and too extreme?<sup>166</sup> Though there is no clear-cut answer to the question, some of the reasons might vary depending on the interests of the parties involved.

One prevailing reason for granting absolute immunity to military peacekeepers is to assure TCC's that their troops will not be liable to legal proceedings in the court of the host state. The mere fact a UN operation is established in a country indicates that the host state is facing several problems, be it political or humanitarian. Under such circumstances, a host state may likely lack adequate judicial institutions as well as insufficient human rights standards. These inadequate measures no doubt will be worrisome to many TCC's, and, understandably, TCC's will want to make sure that their nationals are not subjected to prosecution in the host state; hence, their persistent request for exclusive jurisdiction.

The above arguments presumably purport to prevent the impunity of military peacekeepers. Assuming the condition of the host state is deteriorating following a conflict, it is not bizarre to think that the judicial system which is responsible for investigating the crimes is also incompetent to do so. In such conditions, if the investigation and the proper prosecution of military peacekeepers are left solely to the host state, this, in turn, can lead to impunity. Therefore, an adequate way to ensure peacekeepers are held accountable for their crimes is to allow the TCC's to prosecute them.

All in all, these reasons still seem to be highly ambiguous as these concerns cannot be the sole reason for granting exclusive jurisdiction. An essential factor to consider in a peacekeeping operation is that there is a lot of power play and a struggle between the UN, the host state and the TCC's. It is more likely that TCC's do not want to hand over the power of

---

<sup>164</sup> KULJIT AHLUWALIA, *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations*, 'The legal status of armed forces in foreign territory during peacetime', Martinus Nijhoff, The Hague 1964.

<sup>165</sup> Model SOFA

<sup>166</sup> R. BURKE, p.79

criminal discipline over their military contingents to the UN or the host state; hence the request for exclusive jurisdiction.<sup>167</sup>

As the UN relies heavily on the TCC's for the establishment of a peacekeeping operation, the UN tends to often give in to the demands of the TCC's. It is clear that the reasons mentioned earlier are wholly political and in the personal interest of the TCCs rather than a means of preventing a "jurisdictional gap". If TCC's are genuinely concerned about ending impunity, the prosecution of peacekeepers for crimes committed will be more frequent weighing against the endless number of SEA allegations by peacekeepers.

Considering the rationale behind the immunity granted to peacekeepers, it was never the intention of the UN, host state or TCC to grant absolute immunity to peacekeepers only for them to get away with murder, rape, sexual exploitation and other crimes. Granting immunity to peacekeepers should at no time equate to impunity.

## **2. Exclusive Jurisdiction of the Troop Contributing Country**

In theory, TCCs having exclusive jurisdiction in respect of any criminal offence committed by members of their national contingents appears to be the most efficient means for holding peacekeepers criminally accountable for the crimes committed against the local population while deployed on the mission. However, in practice, there appear to be some hindrances in this regard.

As already noted, Art 47(b) of the Model SOFA provides for the exclusive jurisdiction of a TCC over its military peacekeepers. However, more importantly, is Art 48 of the Model SOFA, which gains assurance from the TCC to efficiently and adequately exercise its jurisdiction concerning the criminal conducts of military peacekeepers. Art 48 of the Model SOFA affirms:

"The Secretary-General of the United Nations will obtain assurance from the Governments of participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences which may be committed by members of their national contingents serving with the peacekeeping operation."<sup>168</sup>

---

<sup>167</sup> D.W. BOWETT AND G.P. BARTON, *United Nations Forces: A legal Study of United Nations Practice*, The Lawbook Exchange, 2008, pp.437-441.

<sup>168</sup> Article 48 Model SOFA

The intentions of the provision of Art 48 of the Model SOFA is clearly to prevent any form of unwillingness on the part of the TCC to exercise its full jurisdiction over criminal offences by peacekeepers which in turn can lead to impunity for peacekeepers.

In the same vein, Art 7 quinquies and Art 7 sexies of the Model MoU both refer to assurances by the TCC's regarding the exercise of its exclusive jurisdiction over criminal offences committed by its peacekeepers as well as the submission of the case to the appropriate authorities for due actions and prosecution.<sup>169</sup>

In as much as all these provisions are essential and aim towards preventing impunity for peacekeepers, one may notice that the provisions are somewhat vague and tend to be more complicated than they seem. The ambivalence of these provisions may tend to create an avenue for TCCs to not fully exercise their jurisdiction in respect to criminal offences of their military peacekeepers. For instance, the MoU does not explicitly provide for sanctions or any other enforcement means in situations where TCCs fail to comply with the provisions contained therein. In this regard, TCC's can simply be making empty promises concerning exercising jurisdiction over the criminal conduct of its military peacekeepers which in turn might lead to further possible problems for exercising jurisdiction.<sup>170</sup>

Furthermore, the mere fact that a TCC can assert jurisdiction does not necessarily mean that the TCC will actually prosecute its military peacekeepers. Asserting jurisdiction but failing to prosecute criminal offences committed by peacekeepers can once again be linked to the lack of sanctions on the part of the UN.

All in all, the judicial system of the TCC might indeed be more effective in terms of investigation and human rights standard from that of a host state. However, holding military peacekeepers criminally accountable is not very often the case as there continually seems to be arising problems on the part of the TCC to prosecute its military peacekeepers for criminal offences.

---

<sup>169</sup> Article 7 MoU

<sup>170</sup> Z DEEN-RACSMANY, p.341 and UN DOC. A/61/494, Art. 7 Septies, para.1

### 3. Possible Problems for Exercising Jurisdiction

#### 3.1 Unwilling troop contributing countries

One predominant obstacle to the prosecution of military peacekeepers by the TCC for their criminal offences is simply the unwillingness of the TCC to do so. Strikingly, this problem transcends to several TCC's. Various factors contribute to the reluctance of a TCC to pursue an allegation of criminal misconduct by its peacekeepers.

First of all, a TCC will want to protect the image of the country and its national contingents at all costs. The prosecution of military for grievous crimes against humanity would tarnish that image. For example, in a case where French troops commit crimes against humanity<sup>171</sup> while deployed on a UN operation, and investigation shows that the allegations are well-founded, the case will be referred to the French government. The French government, in turn, will have to take full responsibility and forward the case to its appropriate authorities for further actions and prosecution. All this could draw negative attention to the country and ultimately put pressure on the government, inevitably destroying the image of the country.

Furthermore, the process of prosecuting a military peacekeeper is very complicated. TCC's will have to investigate the allegations separately and ought to be in constant communication with the UN; this eventually might create a reluctant attitude from the TCC as the entire process is time-consuming and requires more effort and workforce. Although TCCs ought to report the progress of a case to the UN regularly, not all of them do so. This is because the MoU does not explicitly require the TCC to give the UN reasons as to why it is not prosecuting accused criminal peacekeepers.<sup>172</sup> Hence, as long as TCCs are not bound to share reasons for not prosecuting peacekeepers, TCCs might view this as a free pass and decide not to further prosecute thereby not sanctioning peacekeepers for criminal conduct. The following table shows the responses of TCCs in the years 2017 to 2019

---

<sup>171</sup> This is a fictional example.

<sup>172</sup> ZSUZANNA DEEN-RACSMÁNY, The Amended UN Model Memorandum of Understanding: A New Incentive for States to Discipline and Prosecute Military Members of National Peacekeeping Contingents? *Journal of Conflict & Security Law*, Vol 16, Issue 2, 2011, (321) p.341

**Table 8.** Response by Troop Contributing Countries 2017-2019<sup>173</sup>

	2017	2018	2019
No of Substantiated allegations	23	11	8
Pending	12	6	5
Jail	7	2	1
Dismissal	4	3	2
Demotion	2	-	-
Financial Sanctions	2	1	1
No action, “Time Barred”	1	-	-

Source: UN MTS

From the information in table 8, it is possible to deduce that the sanctions imposed on military peacekeepers are not sufficient. The number of pending cases showcases the challenges TCCs face in holding peacekeepers criminally accountable. However, one cannot rely heavily on these numbers as there is a lack of information and transparency in reporting the outcomes of cases by the TCC.<sup>174</sup>

In conclusion, there is, therefore, no certainty that TCCs will comply with the assurance provided in the MoU and prosecute their military peacekeepers thus creating a severe problem for holding peacekeepers criminally accountable

### 3.2 Evidence

Insufficient and unreliable evidence may yet be another excuse for TCCs in order not to exercise jurisdiction over the criminal conduct of its military peacekeepers. Since the alleged crime occurred in the territory of a host state, the TCC will be lacking relevant evidence, as well as access to victims and potential witnesses, all located in the host state, a crucial factor for the proper administration of justice regarding the crimes of the peacekeepers. Without

<sup>173</sup> More than one action may be taken by the member state with respect to the same individual. Data available at: <https://conduct.unmissions.org/sea-actions>

<sup>174</sup> UN Doc. A/59/710 General Assembly, A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations, 24th March 2005, para. 67

substantial shreds of evidence, it will be problematic for a TCC to prosecute military peacekeepers and substantiate the allegations before a court.

The language barrier, lack of trust in the judicial system of the TCC as well as lack of knowledge of the national laws of the TCC may all be barriers for TCCs to get victims or witness testimony. For example, asking a victim or a witness to testify in the national courts of the perpetrator's country may prove to be difficult as it is obvious that such a person may decline as a result of not trusting the proceedings in the TCCs courts. All the above leave the TCC without sufficient evidence.

Admissibility of evidence could be another factor for TCCs not to exercise jurisdiction over criminal offences by their peacekeepers. The host state does the first collection of evidence and investigation and further presents it to the UN Commander of Operations. The force commander of the UN operation will then decide whether or not criminal proceedings are necessary and will then further relay the allegations to the TCC.<sup>175</sup> However, since the criminal procedure of every country is different, it is possible that a TCC might not agree with the evidence presented by the UN, thereby rendering the evidence inadmissible. A solution to this problem can be found by involving a representative of the TCC in the UN investigation team.<sup>176</sup>

## **4. International Humanitarian Law**

### **4.1 Scope of International Humanitarian Law**

The previous subchapters examined the possibility of prosecuting military peacekeepers accused of criminal misconduct through the national criminal law system of both the host state and the TCC. However, another possibility of holding the peacekeeping force criminally accountable is by examining International Humanitarian Law (IHL) and the application of its provision to the criminal conduct of peacekeepers.

IHL or sometimes also referred to as "jus in bello" is a set of rules that aims to limit the devastating impact of armed conflict. Importantly, IHL governs the conduct of the belligerents and ensures the humane treatment of persons as well as regulates the means and methods of warfare employed by warring parties.<sup>177</sup>

---

<sup>175</sup> ROSALYN HIGGINS, PHILIPPA WEBB, DAPO AKANDE, SANDESH SIVAKUMARAN, JAMES SLOAN, *Oppenheim's International Law, United Nations, Vol I, Oxford University Press*, 2017 pp.609 -611

<sup>176</sup> Paragraph 7.13 Model MoU

<sup>177</sup> NILS MELZER, *International Humanitarian Law, 'A comprehensive introduction', International Committee of the Red Cross*, pp.15-34

Two sets of treaties are fundamental in the application of IHL: The Hague Regulations, which focuses on the means and methods of warfare, and the 1949 Geneva Conventions and its Protocols, which seeks to protect the person that is not or no longer partaking in hostilities. These texts, and also any IHL of customary law nature concerning the protection of specific individuals could be useful in holding military peacekeepers criminally accountable. The content of IHL is divided into two categories: International Armed Conflict (IAC) and Non-International Armed conflict (NIAC).

The provisions of IHL could be useful to enhance the criminal accountability of peacekeepers. Since these provisions protect civilians during an armed conflict it may be possible to use them as a legal basis in prosecuting military peacekeeping personnel. The following subchapter will consider the provisions regarding both NIAC and IAC and determine if they are applicable to the crimes committed by military peacekeepers.

#### **4.2 Application of International Humanitarian Law to UN Peacekeeping Personnel**

IHL only applies during an armed conflict; therefore, in order for the provisions of IHL to apply to the criminal conduct of peacekeepers, military peacekeepers must be operating in a NIAC or IAC. The term "armed conflict" is not defined in any of the treaties, however, the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Tadic case<sup>178</sup> set forth a universally accepted definition. The Appeal Chamber of the ICTY asserts that:

"an armed conflict exists whenever there is resort to armed forces between states or armed violence between the state and organized armed groups or solely between organized armed groups within a state."<sup>179</sup>

Within these definitional confines, it is not altogether clear whether the peacekeeper's operations can be part of an armed conflict. For that, one has to assess the specific traits of a peacekeeping mission, its mandate, as well as the context within which it deploys and operates.<sup>180</sup> In case of traditional peacekeeping mission, for instance, it is clear that its operations cannot be conceived as part of an armed conflicts considering that peacekeepers

---

<sup>178</sup> ICTY *prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-1-A, 2<sup>nd</sup> October 1995.

<sup>179</sup> Ibid. 178, para. 70.

<sup>180</sup> GILL T., FLECK D., BOOTHBY W., & VANHEUSDEN A., *Leuven Manual on the International Law Applicable to Peace Operations: Prepared by an International Group of Experts at the Invitation of the International Society for Military Law and the Law of War*, Cambridge: Cambridge University Press p.95

are not authorized to use any means of force or violence except for in the case of self-defence. As a result, the provisions of IHL does not apply to peacekeepers deployed in a traditional peacekeeping operation. Contemporary peacekeeping operation on the other hand are authorized to use force not only in self-defence but also in the defence of the mission's mandate, however, the use of force by peacekeepers in exercising their right to self-defence or the defence of the mandate would not necessarily amount to NIAC and will in most cases not be regulated by IHL.<sup>181</sup> In practice states and international organisation prove to be reluctant to consider that a peace operation has become a party to an armed conflict. This is because when a peace operation becomes party to an armed conflict it is difficult to maintain the impartiality status of the peace operations and the forces to the armed conflict may be legitimately attacked from the opposing party. For the purpose of protecting the personnel of a peace operation, it is more suitable to declare that peace operations are not party to an armed conflict.<sup>182</sup> Though international organisations and states try to maintain that peace operations do not engage in armed conflict there are still certain cases that a peace operation may become a party to an armed conflict.

It is well established that a peacekeeping operation may operate in an armed conflict.

***a) To what extent can IHL apply to the conduct of military peacekeepers?***

In 1999 the Secretary-General issued a Bulletin on the observance of IHL by UN forces<sup>183</sup> which declares in section 1 that:

"The fundamental principles and rules of international humanitarian law set out in the present bulletin apply to United Nations forces when in situations of armed conflict, they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or peacekeeping operations when the use of force is permitted in self-defence."<sup>184</sup>

The principles stipulated in the bulletin explicitly include the protection of civilians, women and children explicitly. This bulletin is binding on all members of the UN force as it issued

---

<sup>181</sup> LEUVEN MANUAL, p.95

<sup>182</sup> Ibid.181, pp.96-97

<sup>183</sup> UN DOC ST/SGB/1999/13, Secretary-General's Bulletin, 'Observance by United Nations forces of International Humanitarian Law', 6<sup>th</sup> August 1999,

<sup>184</sup> Paragraph 1.1 Secretary-General's bulletin 1999



by the Secretary-General. There are some questions about the scope of protection since the Bulletin's rules are limited compared to IHL. For instance, the bulletin only provides for the application of IHL for the duration of the engagement of UN forces.<sup>185</sup> At the same time, the ICTY stipulates IHL applies from the initiation of the armed conflict and extends beyond the cessation of hostilities until a permanent peace agreement is reached.<sup>186</sup> Even so, there are still other sources of IHL than can apply to peacekeepers. International organisations as subjects under international law have international legal rights and obligations including in the field of human rights, therefore the UN as an international organisation must comply with these obligations in all its activities including peace operations.<sup>187</sup>

Furthermore, IHL can be applied through the national laws of the TCC. The TCC's are all party to the Geneva Convention, and most of them are party to the Additional Protocols as well. High contracting parties are obliged to make sure that "members of their national contingent respect the provisions of the convention and its protocols in all circumstances" as stipulated in Art.1 of the Convention and protocols. As a result, military peacekeepers are bound by all IHL treaties to which their respective TCC is a party.

### **4.3 Conclusion**

A setback in the application of IHL to the criminal conduct of peacekeepers is that only the courts of the TCC can exercise jurisdiction in respect to the violation of IHL. In such circumstance, exclusive jurisdiction rests once again with the TCC, and the results depend on the TCC. A TCC might decide to apply the national criminal law rather than IHL.

Furthermore, IHL does not per se apply to the conduct of all military peacekeepers. As mentioned earlier, IHL only applies to military peacekeepers that engage in armed conflict; since peacekeepers do not necessarily operate in an armed conflict, the provisions of IHL will not always be applicable.

---

<sup>185</sup> Ibid. 170

<sup>186</sup> Ibid. 167

<sup>187</sup> LEUVEN MANUAL., p.87

## **IV. HOW THE UN ADDRESSES ALLEGATIONS OF CRIMINAL MISCONDUCT BY MILITARY PEACEKEEPING PERSONNEL**

The final chapter of this thesis focuses on the UN and how the organisation addresses allegations of criminal misconduct by peacekeepers. This chapter aims to develop an understanding of the methods the UN adopts in approaching SEA allegations and further steps taken by it to prevent such criminal conduct.

The chapter is divided into three parts: the first part examines the approach of the UN towards criminal conduct by peacekeepers, analysing the standard of conduct set out by the UN and the strategies it has adopted to eliminate SEA by peacekeepers.

The following part delves into UN's investigation procedures for SEA allegations, while the final part examines whether and how the UN can sanction military peacekeepers for the crimes committed.

The chapter ends with a conclusion addressing the capacity of the UN to address criminal misconduct by peacekeepers and the willingness of the organisation to hold its peacekeepers criminally accountable.

### **1. The Approach of the United Nations**

#### **1.1 Standards of Conduct**

As SEA allegations continued to spread at an alarming rate in UN peace operations illustrating a systematic problem, the organisation began taking corrective steps regarding both the SEA culture of the personnel and the establishment of an accountability mechanism. In 2000 the UNMIK police took actions against SEA perpetrated by military peacekeepers and established the Trafficking and Prostitution Investigation Unit Prevention and Investigation Unit,<sup>188</sup> which labelled specific local business as off-limits to UN personnel.<sup>189</sup> However, its implementation took more than a year. Similarly, MONUC adopted a code of conduct explicitly addressing sexual exploitation and abuse in 2002, though this was not adequately enforced.<sup>190</sup>

---

<sup>188</sup> United Nations Interim Administration Mission in Kosovo, Combating Human Trafficking in Kosovo: Strategy and Commitment, May 2004, p.7

<sup>189</sup> BRUCE OSWALD AND SARAH FINNIN, "Combating the Trafficking of Persons on Peace Operations", in *International Peacekeeping: The Yearbook of International Peace Operations*, 2006, p. 22.

<sup>190</sup> JANE RASMUSSEN, MONUC: Sexual Exploitation and Abuse, End of Assignment Report, 25<sup>th</sup> February 2005

It was not until 2003 that the UN took a clear stance on the issue of SEA when it issued the Secretary-General's Bulletin on the special measures for protection from sexual exploitation and sexual abuse which imposed a zero-tolerance policy in relation to SEA. The Bulletin specified the diligence expected from peacekeepers at all times and outlined the tasks of the Head of Mission for preventing and responding to SEA.

The Bulletin further explains the three actions that are prohibited for UN personnel:<sup>191</sup>

1. Sexual exploitation and sexual abuse
2. Sexual activity with children (a person under the age of 18)
3. Exchange of money, employment, goods or services for sex including sexual favours or other forms of humiliating, degrading or exploitative behaviours.

Furthermore, the adjusted content of the revised MoU was yet another action by the UN to adequately address the conduct of peacekeepers.<sup>192</sup> The MoU obliges TCCs to ensure that all members of its national contingents are familiar with and understand the UN code of conduct standards. In such cases, adequate pre-deployment training according to the UN standard needs to be provided by the TCC.<sup>193</sup>

## **2. Strategy to Eliminate SEA**

In March 2006, the OIOS surveyed the condition of discipline throughout DPKO field missions. The reported issues revealed that each mission displayed areas of weakness. Two significant problems highlighted by the 2006 report were: insufficient resources and skills within the missions to fully execute and enforce the UN code of conduct, and too little guidance on department policies and procedures at the DPKO headquarters.<sup>194</sup>

As a result of some of these weaknesses and in response to the Zeid report, the Special Committee on peacekeeping operation rendered specific recommendations that laid the foundation for a comprehensive strategy to eliminate SEA in all peacekeeping missions. The strategy rests on three core principles involving: prevention, enforcement, and remedial action by the UN.<sup>195</sup>

---

<sup>191</sup> Section 3 Paragraph 2 (a)-(c) Secretary-General's Bulletin 2003

<sup>192</sup> Art. 7 bis Model MoU

<sup>193</sup> Paragraph 7.4 Model MoU

<sup>194</sup> UNGA Doc. A/60/713, Report of the Office of Internal Oversight Services on the global review of discipline in field missions led by the Department of Peacekeeping Operations, 8<sup>th</sup> March 2006.

<sup>195</sup> LEUVEN MANUAL, p.191

## 2.1 Prevention

Prevention is the first and most crucial step for the DPKO and the UN as a whole in eliminating SEA. The effort of this principle is to clarify and lay emphasis on the rules and standards of conduct applicable to all UN personnel. Over the years, the DPKO has ensured that all mission personnel is aware of the UN's rules and regulations; hence, all peacekeeping personnel receive mandatory pre-deployment training.<sup>196</sup> This training is believed to be one of the most effective prevention measures, as inadequate training of peacekeepers has been a major contributing factor to SEA in the past.<sup>197</sup>

International civilian staff receive pre-deployment training directly from the DPKO while TCCs and PCCs are responsible for training their national contingents. Furthermore, peacekeeping personnel serving directly in a field mission are not the only ones subjected to pre-deployment training; the DPKO staff now also undergo mandatory ethics training as part of a broader management program.<sup>198</sup> Similarly, the DPKO took further steps on developing a comprehensive directive for senior mission leadership which aims to provide apparent clearance on the necessary measures for combating SEA as well as a universal standard of operating procedure for handling cases of misconduct.

The establishment of conduct and discipline units (CDU) in almost all peacekeeping operations, as well as political / peacebuilding missions, is yet another preventive measure. These units conduct training on UN standards and are responsible for receiving all initial allegations of misconduct during a mission. The CDUs further categorise the charges and submit requests to the OIOS for onward investigation.<sup>199</sup> The units liaise with all necessary constituents of their respective mission. An example of such constituents is the missions Gender Advisor and Child Protection Advisor. This liaison boosts coordination between the teams and has contributed to the organisation of public campaigns to inform the local population of their rights and avenues for redress.<sup>200</sup>

---

<sup>196</sup> UN CONDUCT AND DISCIPLINE UNIT, UN Strategy, Prevention <https://conduct.unmissions.org/prevention>

<sup>197</sup> Peacekeepers and Sexual Violence in Armed Conflict, Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2006

<sup>198</sup> United Nations, Implementation of the recommendations of the Special Committee on Peacekeeping Operations, Addendum, UN Doc A/60/640/ADD.1, 29<sup>th</sup> December 2005, para.32-33 and UN Doc A/61/668/Add.1 para.63(a)

<sup>199</sup> UNGA Doc. A/62/758, Report of the Secretary-General, 'Comprehensive report of conduct and discipline including full justification of all posts', 20<sup>th</sup> March 2008, para.23-28

<sup>200</sup> UNGA Doc. A/62/890. By 2008 CDU were set up in missions such as Côte d'Ivoire, Liberia, DR Congo, Kosovo, Haiti etc.

## 2.2 Enforcement

In situations where prevention is not successful, and an allegation of criminal conducts is raised against a peacekeeper, the UN strives to proceed to a thorough investigations. The second principle, enforcement, includes specific mission mechanisms for receiving complaints and tracking follow-up action. Investigation of an allegation against civilian personnel within a mission is conducted by the OIOS, which is independent of the peacekeeping operation. In a case where a claim is substantiated, the UN can take disciplinary actions against the personnel, such as repatriation and ban him or her from serving in future operations.<sup>201</sup>

The Department of Field Support launched the UN MTS, which serves as a global database for the systematic tracking of all allegations of misconduct. This tracking system is fundamental as it assesses UN international staff applying to a field mission as well as potential military observers, police officers and military officers for any prior records of misconduct existing against them.

However, there are still difficulties with the enforcement principle. The UN is only able to take administrative actions such as repatriation and dismissal, over military contingents accused of SEA.<sup>202</sup> The responsibility for criminal investigation and criminal sanctioning rests solely with the TCCs, that might sometimes be reluctant to admit to acts of wrongdoing by its national contingents.<sup>203</sup> As a result of this, the UN employed other means of contributing to the enforcement principle. For example, the UN encourages the reporting of criminal misconduct from both by the local population and fellow peacekeepers. In this regard, missions took protective measures establishing a range of secured reporting mechanisms such as private meeting rooms, locked drop-boxes and hotlines. The "whistle-blower policy" further protects peacekeepers that report cases of misconduct from any form of retaliation.<sup>204</sup>

---

<sup>201</sup> JENNA STERN, Reducing Sexual Exploitation and Abuse in UN Peacekeeping: Ten Years after the Zeid Report, *Civilians in Conflict, Policy Brief No. 1*, 2015, p.13

<sup>202</sup> Administrative jurisdiction only includes the ability to fine, dismiss or repatriate a perpetrator of SEA but does not enable the UN to undertake criminal prosecution. AOLAIN F.N., CAHN N.R., HAYNES D.F., VALJI N., *The Oxford Handbook of 'Gender and Conflict'*, Oxford: Oxford University Press, 2018

<sup>203</sup> Art. 7 quarter Model MoU

<sup>204</sup> DJOKIC A, Whistleblower – Whistleblower Policies, Whistleblower Protection Policies and their Manifestation in the United Nations Secretariat. In: ACHATHALER L., HOFMANN D., PÁZMÁNDY M.(EDS) *Korruptionsbekämpfung als globale Herausforderung: Beiträge aus Praxis und Wissenschaft*, Springer, 2011.

### **2.3 Remedial Action**

Remedial action is a core element for assisting victims of SEA. The UN General Assembly, in its commitment to eliminating SEA, adopted a resolution on the UN Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and related Personnel that reinforced the UN endeavour to assist victims.<sup>205</sup>

The goal of this resolution is to ensure that essential services are made available as soon as a victim comes forward. This policy does in no way whatsoever negate the responsibility of alleged perpetrators of SEA but merely provides medical, legal and psychological care to victims.

## **3. Investigations into Allegations of Misconduct**

### **3.1 Procedure**

The investigative procedures of the past into criminal misconduct of peacekeepers were not very efficient as they included duplications in investigations, attempts to cover up crimes and lack of cooperation, all those deficiencies leading to the impunity of peacekeepers. The OIOS also experienced difficulties in conducting a proper investigation into SEA allegations; for instance, the delay case reporting, victim's unwillingness to identify perpetrators and the frequent troop rotations, were all contributing factors. The age of the victims also proved to be a difficulty for an effective investigation of SEA allegations as most times there was not enough evidence such as a birth certificate to ascertain the real age.<sup>206</sup>

In 2003, the UN issued the Directives for Disciplinary Matters Involving Military Members of National Contingents.<sup>207</sup> This set of discipline directives aimed to provide a guidance on appropriate procedures to be followed in a case of misconduct. It further stipulated that the UN had the authority to initiate preliminary investigations into criminal misconduct of peacekeepers. However, these directives were not binding on the military contingents,<sup>208</sup> and

---

<sup>205</sup> UN DOC. A/RES/62/214, Resolution adopted by the General Assembly, 'United Nations comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff and related personnel, 7<sup>th</sup> March 2008.

<sup>206</sup> ERLING GRIMSTAND, Review of Investigations Division OIOS, submitted to the Under Secretary-General of the OIOS, 26<sup>th</sup> June 2007, pp.68-69

<sup>207</sup> UN DOC DPKO/MD/03/0093., UN Directives for Disciplinary Matters Involving Military Members of National Contingents, July 2003.

<sup>208</sup> OSWALD, DURHAM, BATES, p.358

their content was criticized for not being effective for military personnel.<sup>209</sup> As a result of the 2007 revised model MoU, the disciplinary directives are now outdated.

However, over the years, the UN has made tremendous progress in its investigation procedures. First and foremost, Art. 7 quarter of the model MoU outlines the entire investigation procedure, and the General Assembly in its Resolution 59/287 conveyed upon the OIOS the responsibility for investigating allegations within the UN.<sup>210</sup> However, in this regard, the TCCs have the responsibility for investigating all criminal misconduct by its military contingents. The aim behind the GA resolution is to give the OIOS fore rank in a preliminary investigation to enable the unit to establish facts and make recommendations to the TCC. UN's preliminary investigative procedures are, nevertheless, complicated. In a case where the UN has prima facie evidence revealing that a military peacekeeper committed a crime, it must immediately inform the respective TCC. Preserving of evidence is of core importance to an allegation; therefore, the OIOS is allowed to continue its preliminary investigation up until the TCC starts with its own. The TCC has to inform the UN the minute it starts its investigation, and this should be done right after the time the first notification of an allegation was relayed to the TCC by the UN.<sup>211</sup>

In a case where the TCC fails to respond to the notification and does not initiate an investigation, the UN has the authority to conduct administrative investigations which must respect the legal rights of the military peacekeepers provided for by national as well as international law. The OIOS investigations must include a representative of the TCC if one is provided. This is done so as to meet the admissibility of evidence requirement warranted which is needed in domestic proceedings.<sup>212</sup>

In a situation where the UN conducts the preliminary investigation, the TCC should instruct the commander of its national contingent to cooperate with the UN and provide relevant information needed for the investigation.<sup>213</sup> The UN, in turn, has to hand over all the findings from its preliminary investigation to the TCC.

---

<sup>209</sup> RAY MURPHY, United Nations Military Operations and International Humanitarian Law: What Rules Apply to Peacekeepers? In Roberta Arnold (ed), Law enforcement within the framework of peace support operations, 2008, p.229

<sup>210</sup> UN DOC A/RES/59/287 General Assembly Resolution, 'Report of the Office of Internal Oversight Services in strengthening the investigation functions in the UN', 21<sup>st</sup> April 2005

<sup>211</sup> Paragraph 7.15 Model MoU

<sup>212</sup> Z. DEEN-RACSMÁNY, The Amended UN Model Memorandum of Understanding: A New Incentive for States to Discipline and Prosecute Military Members of National Peacekeeping Contingents? *Journal of Conflict and Security Law*, Vol.16, issue 2, 2011, p.338

<sup>213</sup> Paragraph 7.14 Model MoU



Finally, Art. 7 quarter maintains that the UN and TCC will cooperate at all times. According to Art 7 quarter, the UN shall further provide all necessary administrative and logistic support to the TCC and the TCC in return should give the UN information on the investigations conducted by its competent authorities.<sup>214</sup> Yes but backing it up with reference

### **3.2 Investigations in Practice**

The procedure of an investigation into criminal misconduct by peacekeepers as set out by the Model MoU is fundamental. However, it is equally important to examine to what extent the UN and TCCs conduct these investigations in practice. Following the investigation procedures set out by the Model MoU to its letter proves to be almost impossible as many external factors influence the process.

The 2015 OIOS evaluation report indicated some problems in this regard; for instance, the report revealed that many TCCs do not comply with the 10-day deadline for responding to the UN's notification of an allegation raised against its national contingents. This delay may cause further problems for the investigation as preserving evidence is time delicate.<sup>215</sup>

The report also revealed the dissimilarities in investigative standards. Since the respective TCCs primarily investigate their military peacekeepers, there is the potential that military personnel in the same mission who have committed the same crime will not be investigated the same way, hence disciplinary actions will vary. This inconsistency in investigative procedures might prove to be unfair as some TCCs might take severe disciplinary actions while others might treat a SEA as a minor offence; this in return has a negative effect on both the military peacekeepers and the victims. In this regard, several interviewees stated that the UN needs to adopt a universal standard in investigative procedures and disciplinary actions.<sup>216</sup>

Though these shortcomings still need to be adequately addressed, it remains crucial to always keep in mind that investigations must be completed quickly after thorough examination. In this regard, both the UN and TCCs have made progressive steps towards enhancing the investigation procedures in practice. For instance, Congo, Egypt, Gabon, Togo, Ghana, Tanzania and Uruguay, all committed to strengthening investigations through the quick

---

<sup>214</sup> Paragraphs 7.16, 7.17, 7.18, 7.21 Model MoU

<sup>215</sup> OIOS, Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations, 15<sup>th</sup> May 2015, para.21-22

<sup>216</sup> Ibid. 215 Paragraph 25



appointment of national investigations officer for SEA allegations.<sup>217</sup> This method is an improvement to past delays in responding to a SEA notification. The member states cooperate with the Secretariat to appoint a national investigator with five days of the notification of incidents rather than wait for the 10-day deadline. Similarly, Gabon, Burundi and Morocco adopted a joint investigation with the OIOS which establishes cooperation between the latter and those TCCs during the investigation.<sup>218</sup>

Though the investigation into SEA allegations by military peacekeepers still needs improvements, it is evident that over the years the TCCs, as well as the UN, have changed their attitudes concerning SEA allegations and are making progressive steps towards holding military peacekeepers criminally accountable. Efficient investigative practices will, in turn, help eradicate impunity for peacekeepers.

#### **4. Sanctioning Military Peacekeepers**

One might assume that the United Nations can impose criminal sanctions on its peacekeepers for the crimes they committed since it is responsible for establishing a peacekeeping operation; however, this logic does not prove to be so straightforward.

First and foremost, as we have previously showcased, the UN does not have criminal jurisdiction over the military peacekeepers; therefore, conducting criminal investigations and holding peacekeepers criminally accountable is not feasible.

There are minimal disciplinary measures available to the UN to deal with the atrocious behaviours of peacekeepers. Referral of abusers to their national governments for further criminal prosecution or to the International Criminal Court, dismissal from the mission, repatriation, demotion or a pay cut is just a few of the disciplinary actions the UN can fully implement.<sup>219</sup> As long as troops remain under the jurisdiction of their respective TCC, the UN has little to no power over them, thereby subjecting troops strictly to their national laws.

---

<sup>217</sup> Report of the Secretary-General on Special Measures for Protection from Sexual Exploitation and Sexual Abuse, Annex II Best practices of Member States on prevention of and response to sexual exploitation, 2017, UN Doc A/71/818

<sup>218</sup> Ibid. 200

<sup>219</sup> JOHN A. MOORE, JR. JERRY PUBANTZ, *The New United Nations: International Organization in the Twenty-First Century*, Pearson Prentice Hall, 2006, p.113

## 5. Conclusion

Addressing allegations of criminal misconduct by military peacekeepers as well as reducing criminal conduct by the peacekeeping personnel remains a top priority for the United Nations. The legitimacy of the UN and its power of authority significantly relies on its public image. Internal reforms and goodwill of the organisation means little to nothing if the organisation stands accused of abusive or corrupt offences. Scandalous behaviours of peacekeepers will inevitably destroy the image of the UN; hence, the UN's numerous actions to prevent criminal misconduct.

The adoption of a comprehensive strategy to eliminate SEA as well as UN's crucial, albeit subsidiary, role concerning investigating allegations, illustrate the UN's willingness to genuinely address the lack of criminal accountability of military peacekeepers.

However, certain external factors still make it difficult for the organisation to fully realise its goal of eliminating SEA and holding military peacekeepers criminally accountable. For instance, the 10-day waiting period can be harmful to an investigation. In this case, the UN has to wait for ten days of inaction by the TCC before it can initiate an investigation; during this period, much evidence can be compromised making it more challenging to build a solid case against accused peacekeepers.

One might consider that the UN can, in reality, not do much to end the impunity of military peacekeepers, especially as a result of all the external factors restricting the UN. However, the UN remains the key player in a peacekeeping operation.

The UN is responsible for negotiating the agreements with the host state and the TCCs; both the SOFA and the MoU are the primary legal documents for holding peacekeepers criminally accountable. In this regard, the UN is competent in modifying the legal frameworks guiding a peacekeeping operation. The UN should also in its capacity, instigate the necessary changes to strengthen criminal accountability of military peacekeepers.

## V. SUMMARY AND CONCLUSION

The UN often deploys peacekeepers in an insecure and dangerous environment. In such cases, the most vulnerable people seeking help and refuge from the violence and horrors of war turn to the peacekeepers for protection. It is, therefore, a complete betrayal of trust when the protectors turn into the perpetrators.

In the 1990s, the press occasionally reported allegations of criminal misconduct by peacekeeping personnel. Though these reports were shocking, it did not receive mass attention as they did not suggest a problem of a widespread practice of criminal misconduct by peacekeeping personnel and people merely assumed that such behaviour by peacekeepers is not typical.

However, things started to change in 2004 as several articles, both newspapers and NGO journals<sup>220</sup> reported consistent misconduct by peacekeeping personnel in the Democratic Republic of the Congo. The behaviour of peacekeepers in the DRC received mass attention and pushed the UN to launch an investigation. At that period only six of the allegations were substantiated; nonetheless, interviews with the local population revealed the common nature of sexual relations between peacekeepers and the local community which turned in to sexual exploitation and sexual abuse as well as several other grievous crimes against the local population.

In the wake of these reports, the UN took a more serious stance on combating criminal misconduct of peacekeeping personnel and produced several regulations and reports that aim to enhance criminal accountability of peacekeepers. A monumental step from the UN included the Zeid Report in 2005 and the revised Model MoU in 2007.

One might assume that the UN had everything under control with the release of the new rules and regulations guiding a peacekeeping operation, however, despite all these efforts, reports revealed the continuous criminal behaviour of peacekeepers. The vast majority of these crimes included SEA, trafficking, and forced prostitution thereby not only harming the local population but destroying the entire efficacy of the peacekeeping operation and inevitably creating a negative image for the UN.

The main aim of this thesis was to ascertain how military peacekeepers can be held criminally accountable for crimes committed and to further determine if there is a

---

<sup>220</sup> ELISABETH REHN AND ELLEN J. SIRLEAF, Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peacebuilding, *United Nations Development Fund for Women*, Available at: <https://www.unfpa.org/sites/default/files/pub-pdf/3F71081FF391653DC1256C69003170E9-unicef-WomenWarPeace.pdf>

relationship between a peacekeepers nationality and SEA committed while deployed on a mission.

The contemporary regulations on criminal misconduct of military peacekeepers make it indeed possible to hold military peacekeepers criminally accountable. Meaning, if an allegation is made against a peacekeeper, both the UN and the TCC can initiate an investigation and if that allegations further substantiated the TCC has the moral obligation to take actions against the accused peacekeeper.

However, the underlying problem behind holding peacekeepers criminally accountable is not the regulation but rather the current framework and its several issues ranging from underreporting of incidents to lack of transparency which does not ensure that military peacekeepers are held accountable.

TCCs holding the reins over the military members of their national contingents is a significant problem in holding peacekeepers criminally accountable as these TCCs have exclusive jurisdiction over any crime committed by their military peacekeepers. The criminal accountability of military peacekeepers depending ultimately on the TCC is risky as many times the TCC is unwilling to take actions and the accused peacekeeper is left unsanctioned.<sup>221</sup> To avoid the impunity of peacekeepers, individual proposals that will enhance the criminal accountability of military peacekeeping personnel need to be taken into consideration.

First and foremost, there needs to be a communicative relationship between the local population and the mission. The local population needs to be aware that standards of conduct do exist and apply to military peacekeepers. It is easier for the local population to come forward to report incidents of misconduct when it realizes that the UN strongly forbids any form of sexual exploitation and sexual abuse of locals, thus increasing the reporting of incidents and enhancing the criminal accountability of peacekeepers. Most importantly, reporting mechanisms for SEA should not only be made available, but the UN needs to ensure that the locals are aware of them.<sup>222</sup>

Informing the local population of how allegations are being handled is equally essential. People have to see that accusations are indeed investigated, and that accused peacekeepers

---

<sup>221</sup> The UN can only take administrative sanctions against military peacekeepers such as repatriation or banning the personnel from future mission, all criminal disciplinary sanctions rests with the TCC.

<sup>222</sup> Interviews conducted in Haiti reveals that only 7 interviewees were aware about the UN policy prohibiting SEA and not a single interviewee was aware of the existing reporting mechanism or the hotline numbers. OIOS Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peace Operations, 2015, para.47

are sanctioned for the crimes committed. This, in return, will improve the relationship between the mission and the local population as well as encourage locals to report incidents more frequently, thus leading to less impunity of military peacekeepers.

Secondly, there is a need for better cooperation from TCC in prosecuting accused military peacekeeping personnel. It is unrealistic to take away the exclusive jurisdiction of the TCC over its national contingents simply because no TCC will accept such change. However, instead of a TCC to exercise exclusive jurisdiction, it can be changed to primary jurisdiction. Primary jurisdiction in this context implies that the TCC has the authority to assume criminal jurisdiction over its military peacekeepers only on the condition that the TCC complies to prosecute an accused peacekeeper to the letter. In a case whereby the TCC fails to comply or is unwilling to prosecute an accused peacekeeper, another judicial body assumes jurisdiction. The rationale behind a subsidiary jurisdiction of an international judicial body is to prevent the sanctioning of peacekeepers to depend on the willingness or unwillingness of the TCC solely.

Finally, there are still significant problems with the handling of criminal misconduct allegations. A prominent step in this regard is for the UN to change the prosecution procedure and its investigations. This might, however, prove to be impossible as TCCs will first have to agree to such change and it is implausible for a TCC to easily hand over the control of the criminal investigation of its military peacekeepers. In such a situation, the UN cannot force the TCC to do so either; nonetheless, the UN can negotiate legal frameworks which persuade TCCs to change their rules governing military peacekeepers. This approach might be practical as TCCs do also benefit from participating in a peacekeeping operation.<sup>223</sup>

These proposals and recommendations are indeed very challenging on both the UN and the TCCs and probably will not be readily accepted especially the proposal of a new prosecution procedure.

Findings on the relationship between a peacekeepers' SEA behaviour and the norms of his or her home country were inconclusive. However, this thesis was able to ascertain that the gender inequality in TCCs as the explanatory variable to SEA behaviour by peacekeepers is plausible. As a result of underreporting of incidents and lack of systematic data on SEA the derivations from the research indicate that further research is warranted to close the gap between TCCs societal norms and peacekeepers' SEA behaviour.

---

<sup>223</sup> F. LEWIS, Human Rights Abuses in UN Peacekeeping: Providing Redress and Punishment while Continuing Peacekeeping Missions for Humanitarian Progress, *Southern California Interdisciplinary Law Journal*, Vol.23, Iss.3, 2014, pp.620-621

In order not to undermine the process of data collection on the SEA, it is essential to recognize the value of the already available data. The readily available data discuss vital issues on the alarming trends of SEA and has shifted to the era of "naming and shaming" to hold TCCs accountable for their peacekeepers' actions. The data also revealed that military peacekeeper from TCCs is alleged of the highest number of SEA perpetrated in comparison to civilian personnel.<sup>224</sup>

Although this research did not explicitly discuss reforms, few recommendations need to be outlined for further investigation. First and foremost, there needs to be a higher rate of inclusion of women in peacekeeping operations. Over the years women's participation in peacekeeping operation has improved the overall peacekeeping performance, enabled greater access to communities, encouraged women to become part of the peace and political processes as well as helped in promoting human rights and the protection of civilians.<sup>225</sup>

Scholars have also suggested that increasing the number of female peacekeepers directly on the field may have a positive effect on reducing the SEA.<sup>226</sup> This is clearly as a result of the military masculinity and patriarchal nature of a peacekeeping operation, thus making male peacekeepers the predominant - though not the sole - SEA offenders.<sup>227</sup> Therefore, a higher inclusion of females in peacekeeping operations can be influential in diluting the masculinity approach to peacekeeping with their femininity.<sup>228</sup>

Also, another argument made for the inclusion of more women in peacekeeping operations comes from the expectation that men will be less likely to engage in SEA as the presence of their female counterparts may deter such behaviour.<sup>229</sup>

A second recommendation is a need for an improvement in the gender roles of the TCCs. Perhaps recruitment of peacekeepers should only come from countries that have scored high across all gender indices and countries that have necessary legal infrastructures to hold peacekeeping personnel criminally accountable.

---

<sup>224</sup> UN MISCONDUCT TRACKING SYSTEM

<sup>225</sup> United Nations Peacekeeping, Women in Peacekeeping: A key to Peace, as of 31<sup>st</sup> December 2019 only 6% of all uniformed military, police, and justice corrections personnel in the field missions are women. Available at: <https://peacekeeping.un.org/en/women-peacekeeping>

<sup>226</sup> BRIDGES, D., & HORSFALL, D., Increasing Operational Effectiveness in UN Peacekeeping: Toward a Gender-Balanced Force, *Armed Forces & Society*, 36(1), pp.120-130

<sup>227</sup> STIEHM, JUDITH HICKS., Women, Peacekeeping and Peace-making: Gender Balance and Mainstreaming, *International Peacekeeping* 8(2), pp.39-48

<sup>228</sup> SIMIC, OLIVERA., "Rethinking Sexual Exploitation in UN Peacekeeping Operations", *Women's Studies International Forum*, 32(4), pp.288-95

<sup>229</sup> Ibid. 206

Thirdly, the UN needs to adopt a stricter regulation on its zero-tolerance policy and ensure that all member states fully comply with its rules. Many member states have signed and ratified legal instruments that protect and uphold women's rights as well as prevent sexual abuse. Still, only a few have incorporated these international legal instruments into their national laws. The UN needs to hold member states accountable and begin to make examples of those countries that fail to abide by the regulations. Perhaps a more effective way is through jurisdiction changes as to who oversees the judicial processes.

Finally, most times, a peace operation is the last ray of hope for both the host state and the local population. However, due to the alarming rate of abuse experienced by the local population at the hands of peacekeeping personnel, a peacekeeping force no longer represents hope for a better future but rather reminds the people of when a peacekeeper harmed them, their family members or friends. Therefore, it is of paramount importance that the UN continues to adopt strategies that will effectively eliminate all forms of SEA in peace operations. Additionally, the UN must enhance the criminal accountability of military peacekeepers accused of any form of criminal misconduct.

The present legal framework of the organisation is not very capable of effectively eradicating the culture of impunity among peacekeepers due to the many obstacles present in holding peacekeepers criminally accountable. Nonetheless, the UN must not cease its endeavours to continually undertake actions to address the most pressing issues while simultaneously working towards finding a lasting solution that permanently improves the situation of peace operations.

Albeit the many obstacles between the present situation of SEA by peacekeepers in peace operations and a renewed UN peacekeeping where military peacekeepers are held criminally accountable, the UN must convince all parties involved to amend their regulations towards criminal misconduct by military peacekeepers. Only then will the culture of impunity for peacekeepers be entirely eradicated, enhancing the criminal accountability of peacekeepers while at the same time eliminating violence experienced by the local population.

It is not right to assume that it will be easy for the UN to achieve all the required changes for a better peace operation. Nonetheless, that should not prevent the UN from giving all it has towards finding a lasting solution to the problem of sexual exploitation and abuse by peacekeepers during peace operations.

## **BIBLIOGRAPHY**

---

### ▪ **REGULATIONS**

- The African Charter on the Rights and Welfare of the Child, 1990
- Charter of the United Nations, 26<sup>th</sup> June 1954
- Convention on the Rights of the Child, 20<sup>th</sup> November 1989
- Convention on the Elimination of All Forms of Discrimination Against Women, 18<sup>th</sup> December 1979
- Convention on the Privileges and Immunities of the United Nations, 13<sup>th</sup> February 1946
- Geneva Convention relative to the Treatment of Prisoners of War (Geneva Convention III), 12<sup>th</sup> August 1949
- Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), 12<sup>th</sup> August 1949
- Protocol Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8<sup>th</sup> June 1977
- Protocol Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Non-International Armed Conflict (Protocol II), 8<sup>th</sup> June 1977
- Rome Statute of the International Criminal Court, 17<sup>th</sup> July 1998
- Statute of International Court of Justice, 18<sup>th</sup> April 1946

### ▪ **UNITED NATIONS**

#### - **REPORTS**

- UN DOC. A/69/779. General Assembly, Report of the Secretary-General “Special measures for protection from sexual exploitation and sexual abuse”, 13<sup>th</sup> February 2015
- UN DOC. A/57/465. General Assembly, Note by the Secretary-General “Investigation into sexual exploitation of refugees by aid workers in West Africa”, 11<sup>th</sup> October 2002



- UN DOC. A/59/710. General Assembly, “A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations”, 24<sup>th</sup> March 2005
- UN DOC. A/45/594. General Assembly, Report of the Secretary-General “Model status-of-forces agreement for peace-keeping operations”, 9<sup>th</sup> October 1990
- UN DOC. A/46/185. General Assembly, Report of the Secretary-General, ‘A comprehensive review of the whole question of peacekeeping operations in all their aspects: Model agreement between the United Nations and member states contributing personnel and equipment to United Nations peace operations’, 23<sup>rd</sup> May 1991.
- UN DOC. A/61/494. General Assembly, Note by the Secretary-General “Revised draft model memorandum of understanding between the United Nations and (participating State) contributing resources to (the United Nations Peacekeeping Operation), 3<sup>rd</sup> October 2006.
- UN DOC. A/C.5/69/18. General Assembly, “Manual on policies and procedures concerning the reimbursement and control of contingent-owned equipment of troop/police contributors participating in peacekeeping missions (COE Manual), 20<sup>th</sup> January 2015
- UN DOC. A/73/744. General Assembly, Report of the Secretary-General “Special measures for protection from sexual exploitation and abuse”, 14<sup>th</sup> February 2019.
- UN DOC. A/60/713. General Assembly, “Report of the Office of Internal Oversight Services on the global review of discipline in field missions led by the Department of Peacekeeping Operations”, 8<sup>th</sup> March 2006.
- UN DOC. A/60/640/ADD.1. General Assembly, Report of the Secretary-General, Addendum “Implementation of the recommendations of the special committee on peacekeeping operations”, 29<sup>th</sup> December 2005.
- UN DOC. A/61/668/ADD.1. General Assembly, Report of the Secretary-General, Addendum “Implementation of the recommendations of the special committee on peacekeeping operations”, 22<sup>nd</sup> December 2006.
- UN DOC. A/62/758. General Assembly, Report of the Secretary-General, “Comprehensive report of conduct and discipline including full justifications of all posts”, 20<sup>th</sup> March 2008.
- UN DOC. A/62/890. General Assembly, Report of the Secretary-General, “Special measures for protection from sexual exploitation and abuse”, 25<sup>th</sup> June 2008.

- UN DOC. A/61/841. General Assembly, Report of the Office of Internal Oversight Services on its investigation into allegations of sexual exploitation and abuse in the Ituri region (Bunia) in the United Nations Organisation Mission in the Democratic Republic of the Congo, 5<sup>th</sup> April 2007.
- UN DOC. A/71/818. General Assembly, Report of the Secretary-General, “Special measures for protection from sexual exploitation and abuse: a new approach”, 28<sup>th</sup> February 2017.

## - **RESOLUTIONS**

- UN DOC. ST/SGB/2003/13. Secretary-General’s Bulletin, “Special measures for protection from sexual exploitation and abuse”, 9<sup>th</sup> October 2013
- UN DOC. ST/SGB/1999/13. Secretary-General’s Bulletin, “Observance by United Nations forces of international humanitarian law”, 6<sup>th</sup> August 1999
- UN DOC. A/RES/52/12 B. Resolution adopted by the General Assembly, “Renewing the United Nations: a programme for reform”, 9<sup>th</sup> January 1998.
- UN DOC. A/RES/59/287. Resolution adopted by the General Assembly, “Report of the Office of Internal Oversight Services on strengthening the investigation functions in the United Nations”, 21<sup>st</sup> April 2005.
- UN DOC. A/RES/62/214. Resolution adopted by the General Assembly, “United Nations comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff and related personnel”, 7<sup>th</sup> March 2008.
- UN DOC. A/RES/57/306. Resolution adopted by the General Assembly, “Investigation into sexual exploitation of refugees by aid workers in West Africa”, 22<sup>nd</sup> May 2003.
- UN DOC. A/RES/61/267 B. Resolution adopted by the General Assembly, “Comprehensive review of a strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations”, 24<sup>th</sup> August 2007.
- UN DOC. S/RES/1528. Resolution adopted by the Security Council at its 4918<sup>th</sup> meeting, 27<sup>th</sup> February 2004.
-

## ▪ **JURISPRUDENCE**

- ICJ, Certain expenses of the United Nations (Article 17, paragraph 2 of the Charter), Advisory Opinion, ICJ Reports 1962
- ICTY, Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-1-A (2<sup>nd</sup> October 1995).
- ICTY, Prosecutor v. Dusko Tadic, Appeals Judgement, Case No. IT-94-1-A (15<sup>th</sup> July 1999)
- North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), International Court of Justice, Reports of judgements, advisory opinions and orders (ICJ Reports), 1969.

## ▪ **LEGAL DOCTRINES**

### - **BOOKS**

- AHLUWALIA K., The legal status, privileges and immunities of the specialized agencies of the United Nations and certain other international organisations, Martinus Nijhoff, 1964, pp.230.
- AOLAINE F.N., CAHN N.R., HAYNES D.F. AND VALJI N., The Oxford Handbook of 'Gender and Conflict', Oxford University Press, 2018, pp.628.
- AUST A., Modern Treaty Law and Practice, Cambridge University Press, 2013, pp.554.
- BELLAMY A.J., The 'Next Stage' in Peace Operations Theory? In: Bellamy A. and Williams P.(eds), Peace Operations and Global Order, Routledge: Taylor & Francis, 2014, pp.234.
- BELLAMY A.J., AND WILLIAMS P.D., Providing Peacekeepers: The politics, challenges, and future of United Nations Peacekeeping contributions, Oxford: Oxford University Press, 2013, pp.480.
- BOWETT D.W AND BARTON G.P., United Nations Forces: A legal Study of United Nations Practice, The Lawbook Exchange, 2008, pp.579.
- DJOKIC A., Whistleblowing – Whistleblower Policies, Whistleblower Protection Policies and their Manifestation in the United Nations Secretariat. In: Achathaler L., Hofmann D., Pazmandy M. (eds), Korruptionsbekämpfung als globale Herausforderung: Beiträge aus Praxis und Wissenschaft, Springer, 2011, pp.243.

- DURCH W. J., ANDEWS K. N. AND ENGLAND, M. L., Improving Criminal Accountability in United Nations Peace Operations, Washington DC, Stimson Center, 2009, p.84.
- FINDLAY T., Challenges for the New Peacekeepers, Oxford University Press, 1996, pp.170.
- GILL T.D., AND FLECK D.(eds), The Handbook of the International Law of Military Operations (2<sup>nd</sup> edition), Oxford: Oxford University Press, 2015, pp.687.
- GILL T., FLECK D., BOOTHBY W.H., VANHEUSDEN A., Leuven Manual on the International Law Applicable to Peace Operations: Prepared by an International Group of Experts at the Invitation of the International Society for Military Law and the Law of War, Cambridge University Press, 2017, pp.389.
- GROMES T., A Humanitarian Milestone? NATO's 1999 Intervention in Kosovo and Trends in Military Responses to Mass Violence, Peace Research Institute Frankfurt, 2019, pp.35.
- HIGGINS R., WEBB P., AKANDE D., SIRAKUMARAN S., AND SLOAN J., Oppenheim's International Law: United Nations, Oxford University Press, 2018, pp.1642.
- KORZENIEWSKI K., Sexually Transmitted Infections Among Army Personnel in the Military Environment. In: NANCY MALLA (ed), Sexually Transmitted Infections, Croatia, Intech, 2012.
- MELZER NILS., International Humanitarian Law: A Comprehensive Introduction, ICRC, 2016, pp.355.
- MOORE J.A., PUBANTZ J., The New United Nations: International Organisation in the Twenty-First century, Pearson Prentice Hall, 2006, pp.370.
- MURPHY R., United Nations Military Operations and International Humanitarian Law: What Rules Apply to Peacekeepers? In: Roberta Arnold (ed), Law Enforcement within the Framework of Peace Support Operations, 2008.
- NEUDORFER K., Sexual Exploitation and Abuse in United Nations Peacekeeping: An Analysis of Risk and Prevention Factors, Lexington Book, 2014, pp.214.
- O'FLAHERTY M., The Human Rights Field Operation: Law, theory and practice, Ashgate Publishing, 2007, pp.467.
- O'NEILL J.T., REES NICK, AND REES NICHOLAS., United Nations Peacekeeping in the Post-Cold War Era, Taylor & Francis, 2005, pp.228.
- OPPENHEIM L.F., International Law: A Treatise, Vol.1 (2<sup>nd</sup> edition), Longmans, Green and Company, 1912, pp.461.

- OSWALD B., DURHAM H., BATES A., Documents on the Law of UN Peace Operations, Oxford University Press, 2019, pp.704.
- OSWALD B., AND FINNIN S., Combating the Trafficking of Persons in Peace Operations. In: Langholtz H., Kondoch B., and Wells A., International Peacekeeping: The Yearbook of International Peace Operations, Martinus Nijhoff, 2005, pp.398.
- SEBASTIAN S., AND GORIR A., U.N. Peacekeeping and Host-State Consent: How Missions Navigate Relationships with Governments, Stimson Centre, 2018, pp.45.
- SCHERMERS H.G., AND BLOKKER N.M., International Institutional Law: Unity Within Diversity, (6<sup>th</sup> Revised Edition), Leiden, Boston: Brill Nijhoff, 2018, pp.1279.
- SIMIĆ O., Regulation of Sexual Conduct in United Nations Peacekeeping Operations, Springer Science and Business Media, 2012, pp.194.
- WILLS S., Protecting Civilians: The Obligations of Peacekeepers, Oxford: Oxford University Press, 2009, pp.296.
- ZACARIAS A., The United Nations and International Peacekeeping, Tauris Academic Studies, London, 1996, pp.230

#### - **JOURNAL ARTICLES**

- ALLEN W.D., The Reporting and Underreporting of Rape, Southern Economic Journal, Vol.73, Issue 3, 2007, pp.623-641.
- BASAR U., An Analysis of Assessment of Peacekeeping Operations, The Korean Journal of Defense Analysis, Vol.26, Issue 3, 2014, pp.389-406.
- BETH DiFELICE., International Transitional Administration: The United Nations in East Timor, Bosnia-Herzegovina, Eastern Slavonia, and Kosovo – A bibliography, International Journal of Legal Information, Vol.35, Issue 1, Article 7, 2007
- BRIDGES D., AND HORSFALL D., Increasing Operational Effectiveness in UN Peacekeeping: Toward a Gender-Balanced Force, Armed Forces & Society, 36(1), 120-130.
- BURKE R., Status of Forces Deployed on UN Peacekeeping Operations: Jurisdictional Immunity, Journal of Conflict and Security Law, Vol.16, no.1, 2011.
- DEEN-RACSMANY Z., The Amended UN Model Memorandum of Understanding: A new Incentive for States to Discipline and Prosecute Military Members of National

Peacekeeping Contingents? *Journal of Conflict and Security Law*, Vol.16, Issue 2, 2011, pp.321-355.

- DEFEIS E.F., U.N Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity, *Washington University Global Studies Law Review*, Vol.7, Issue 2, 2008, pp. 185-214.
- GOULDING M., The Evolution of United Nations Peacekeeping, *International Affairs*, Vol.69, Issue 3, 1993, pp.451-464.
- GRAY C., Host-State Consent and United Nations Peacekeeping in Yugoslavia, 7 *Duke Journal of Comparative and International Law*, 1996, pp.270.
- KARIM S., AND KYLE BEARDSLEY., Explaining SEA in Peacekeeping Missions: The role of female peacekeepers and gender equality in contributing countries, *Journal of Peace Research*, Vol. 53, Issue 1, pp.100-115.
- KENKEL M.K., Five Generations of Peace Operations: From the ‘thin blue line’ to ‘painting a country blue’, *Revista Brasileira de Politica International*, Vol. 56, Issue 1, 2013, pp.122-143.
- LEWIS F., Human Right Abuses in U.N Peacekeeping: Providing Redress and Punishment while Continuing Peacekeeping Missions for a Humanitarian Progress, *Southern California Interdisciplinary Law Journal*, Vol.10, Issue 1, 2014, pp. 346-364.
- NDULO M., The United Nations re3ponses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions, *Berkeley Journal of International Law*, Vol.27, Issue 1, 2009, pp.127-161.
- NORDAS R. AND SIRI C., Sexual Exploitation and Abuse by Peacekeepers: Understanding Variation, *International Interactions*, Vol.39, Issue 4.
- O’BIEN M., Protectors on Trial? Prosecuting Peacekeepers for War Crimes and Crimes against Humanity in the International Criminal Court, *International Journal of Law, Crime and Justice*, Vol. 40, Issue 3, 2012, pp.223-241
- OLSSON L., Mainstreaming Gender in Multidimensional Peacekeeping: A field perspective, *International Peacekeeping*, Vol. 7, Issue 3, 2000, pp.1-16.
- PRIEST-HAMILTON K.C., Who really should have exercised jurisdiction over the military pilots implicated in the 1998 Italy Gondola Accident, *Journal of Air Law and Commerce*, Vol.65, issue 3, part 9, 2000.
- STIEHM J.H., Women, Peacekeeping and Peace-making: Gender Balance and Mainstreaming, *International Peacekeeping*, 8(2).

- VINCENZO B., AND RUGGERI A., Kinds of Blue: Diversity in UN Peacekeeping Missions and Civilian Protection, British Journal of Political Science, 2015
- WESTERNDORF J.K., AND SEARLE L., Sexual Exploitation and Abuse in Peacekeeping Operations: Trends, policy responses and future directions, International Affairs, Vol. 93, Issue 2, 2017, pp.387.
- WORSTER T., Immunities of United Nations Peacekeepers in the Absence of a Status of Forces Agreement, Military Law and the Law of War Review, Vol. 43, Issue 2, 2008, pp.376.

## ■ **WEBSITES**

- Conduct in UN Field Mission, Statistics on Sexual Exploitation and Abuse, <https://conduct.unmissions.org/sea-data-introduction> (last accessed 29 July 2020)
- Conduct in UN Field Mission, Sexual Exploitation and Abuse, Alleged Perpetrators, <https://conduct.unmissions.org/sea-subjects> (last accessed 29 July 2020)
- Conduct and Discipline Unit, UN Strategy, Prevention, <https://conduct.unmissions.org/prevention> (last accessed 29 July 2020)
- GeorgeTown Institute for Women, Peace and Security, Women, Peace and Security Index, <https://giwps.georgetown.edu/the-index/>
- Indicators for Gender Equality and Women's Empowerment, <http://www.oecd.org/dac/gender-development/43041409.pdf>
- Peace and Security Section of the United Nations, Peacekeeping Operations Fact Sheet, 30<sup>th</sup> September 2019, [https://peacekeeping.un.org/sites/default/files/pk\\_factsheet\\_09\\_2019\\_english\\_1.pdf](https://peacekeeping.un.org/sites/default/files/pk_factsheet_09_2019_english_1.pdf)
- Summary of Troop Contributing Countries by Ranking, Police, UN Military Experts on Missions, Staff Officers and Troops, 28<sup>th</sup> February 2018, [https://peacekeeping.un.org/sites/default/files/2\\_country\\_ranking\\_report.pdf](https://peacekeeping.un.org/sites/default/files/2_country_ranking_report.pdf)
- Summary of Troop Contributing Countries by Ranking: Police, UN Military Experts on Mission, Staff Officers and Troops, [https://peacekeeping.un.org/sites/default/files/2\\_country\\_ranking\\_15.pdf](https://peacekeeping.un.org/sites/default/files/2_country_ranking_15.pdf)
- The World Bank, Proportion of seats held by women in national parliaments, <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS>
- United Nations Peacekeeping, Military, <https://peacekeeping.un.org/en/military>



- United Nations Peacekeeping, Forming a new operation, <https://peacekeeping.un.org/en/forming-new-operation>
- United Nations Peacekeeping, How we are funded, <https://peacekeeping.un.org/en/how-we-are-funded>
- United Nations Peacekeeping, Women in Peacekeeping, <https://peacekeeping.un.org/en/women-peacekeeping>
- United Nations Peacekeeping Operations, Principles and Guidelines, [https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf)
- United Nations Committee for Development Policy, List of least developed countries as of December 2018, [https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc\\_list.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf)
- United Nations Human Rights Office of the High Commissioner, CEDAW, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>
- United Nations Development Programme, Human Development Report, Gender Inequality Index (GII), <http://hdr.undp.org/en/content/table-5-gender-inequality-index-gii>
- What is a Developing Country? Country Classification, <https://www.thebalance.com/what-is-a-developing-country-1978982>
- World Economic Situation and Prospects: Data Sources, country classification and aggregation methodology, [https://www.un.org/en/development/desa/policy/wesp/wesp\\_current/2014wesp\\_county\\_classification.pdf](https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_county_classification.pdf)

## ▪ **OTHERS**

- AMNESTY INTERNATIONAL NEWS., Vol. 27, No.5, Index number NWS 21/005/1997, September 1997
- BOWCOTT O., Report reveals shame of UN peacekeepers, The Guardian, 25<sup>th</sup> March 2005, <https://www.theguardian.com/world/2005/mar/25/unitednations>
- CHUN S., Sexual Exploitation and Abuse by UN Peacekeepers, International Peace Research Institute Oslo, Policy Brief, October 2009.
- CSÁKY C., No one to turn to: The under-reporting of child sexual exploitation and abuse by aid workers and peacekeepers, Save the Children UK, 2008, pp.27.



- DIETER F., Guidebook: Drafting Status-of-Forces Agreements (SOFAs), Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2009, pp.28.
- NANJI S., Sexual Exploitation and Abuse by UN Peacekeeping Personnel: The impact of troop contributing countries societal norms, Master thesis submitted to Columbia University, Human Rights Studies Master of Arts, February 2018.
- SHEERAN S., United Nations Peacekeeping and the Model Status of Forces Agreement, United Nations Peacekeeping Law Reform Project, School of Law, University of Essex.
- SOLA-MARTIN A. AND WOODHOUSE T., the United Nations armed conflict and peacekeeping, Open University of Catalonia Foundation.
- STERN J., Reducing Sexual Exploitation and Abuse in UN Peacekeeping: Ten years after the Zeid report, Stimson Centre, Policy Brief No.1, February 2015, pp. 23.
- ST-PIERRE K., Then and Now: Understanding the Spectrum of Complex Peace Operations, Pearson Peacekeeping Centre, 2008.

