UNIVERSITY OF HELSINKI

European Master's Degree in Human Rights and Democratization
A.Y. 2015/2016

THE UNDERWORLD OF UNITED NATIONS PEACEKEEPING OPERATIONS

A EUROPEAN COURT OF HUMAN RIGHTS PERSPECTIVE

Author: Ioana Delapeta, LL.B
Supervisor: Prof. Jan Klabbers

In keeping silent about evil, in burying it so deep within us that no sign of it appears on the surface, we are implanting it, and it will rise up a thousand fold in the future. When we neither punish nor reproach evildoers, we are not simply protecting their trivial old age, we are thereby ripping the foundations of justice from beneath new generations.
— Aleksandr Solzhenitsyn, The Gulag Archipelago 1918-1956

Until justice rolls down like water and righteousness like a mighty stream.
— Martin Luther King Jr.

Abstract

The image of the UN began to be tainted in the past 20 years due to numerous allegations of sexual abuse and exploitation committed by personnel related to its peacekeeping operations. The current study briefly assessed the measures undertook by the organization in order to address the issue, as well as those took by its member states, the former having proved to be inefficient up until now, mostly because of their non-legally binding effect and the latter failing, troop-contributing countries having a very poor record of investigating and prosecuting perpetrators.

The core of this paper was to explore alternative solutions to this problem. As such, its main purpose was to ascertain if through the ECtHR's past and future case-law it would be possible to pressure the members of CoE to either proceed to effective investigations and prosecutions of their nationals involved in similar allegations, or to adapt, when needed, their laws accordingly. Court's principles such as dual attribution of conduct and positive obligations of states were succinctly addressed, the focal point being the extraterritorial application of the ECHR to similar cases, our case study having been done on the situation related to Frech Sangaris Forces in Central African Republic.

Table of acronyms

BINUCA	UN Integrated Peacebuilding Office in the Central African Republic
CAR	Central African Republic
CoE	Council of Europe
DARIO	Draft Articles on the Responsibility of International Organizations of 2011
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as Amended)
ECtHR	European Court of Human Rights
ILC	International Law Commission
MINUSCA	United Nations' Multidimensional Integrated Stabilization Mission in the Central African Republic
MISCA	African-led International Support Mission in the CAR
NGO	Nongovernmental Organization
OHCHR	Office of the High Commissioner for Human Rights
OIOS	United Nations Office of Internal Oversight Services
SOFA	Status of Forces Agreement
UN	United Nations
UN Charter	The United Nations and Statute of the International Court of Justice
UNGA	United Nations' General Assembly
TCC	Troop-contributing country

Table of Contents

General introduction

> *When we represent the UN, we represent the very best that humanity has to offer.*
>
> Jane Holl Lute[1]

Soon after the creation of the United Nations (hereafter « UN »), in 1948, numerous peacekeeping operations started to be deployed throughout the globe, with the mandate of maintaining peace and security in early post-conflict areas – generally to secure a cease fire or peace agreement[2] –, their number having considerably increased after the fall of the Berlin Wall in 1989[3]. These operations were created with the aim of providing support to countries in transition and ensuring security in such areas[4], and are considered by the UN to be one of its most effective tools in assisting « host countries navigate the difficult path from conflict to peace[5] ». As such, in 1988, their contribution was even underlined as significant to world peace, when the United Nations Peacekeeping Forces were granted the Peace Nobel Prize[6].

Not long after the fall of the Berlin Wall, the UN peacekeeping operations' image began to be tainted with *shocking* allegations[7] such as its related personnel exchanging money, goods or services for sex with host countries' children and women finding themselves in

[1] Jane Holl Lute was apointed by the Secretary-General Ban Ki-moon, in February 2016, in order to coordinate efforts to combat sexual exploitation and abuse by personel related to UN peacekeeping misisons. United Nations News Service Section, 'UN News - Video: Senior UN Official Visits Central African Republic to Focus on Stronger Measures against Sexual Abuse' (*UN News Service Section*, 8 April 2016) <http://www.un.org/apps/news/story.asp?NewsID=53644&&Cr=sexual%20exploitation&&Cr1=#.V0240Ebl8wN> accessed 31 May 2016.
[2] United Nations, 'Peace and Security' (*United Nations Peacekeeping*) <http://www.un.org/en/peacekeeping/operations/peace.shtml> accessed 21 June 2016.
[3] United Nations, 'History of Peacekeeping - Post Cold-War Surge.' (*United Nations Peacekeeping*) <http://www.un.org/en/peacekeeping/operations/surge.shtml> accessed 18 April 2016.
[4] United Nations, 'What Is Peacekeeping?' (*United Nations Peacekeeping*) <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml> accessed 21 June 2016.
[5] ibid.
[6] The Norwegian Nobel Institute, 'United Nations Peacekeeping Forces - Facts' (*Nobelprize.org*, 2014) <https://www.nobelprize.org/nobel_prizes/peace/laureates/1988/un-facts.html> accessed 21 June 2016.
[7] Elizabeth F Defeis, 'UN Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity' (2008) 7 Wash. U. Global Stud. L. Rev. 185, 186 and 187.

precarious economic conditions, a numerous number of them ending up being accused of rape, verbal sexual abuse, pornography, sexual slavery and even human trafficking of locals for sexual purposes[8].

In 2005, an official report of the Secretary-General of the UN officially confirmed the existence of these allegations. The report described the situation as « profoundly disturbing[9] » and stated that these abuses additionally contribute to worsen other human rights related situations in host countries, such as the spreading of HIV[10] and the birth of so called abandoned *peacekeeper babies*[11]. This problem, which became of political character[12], gained more and more attention from the media in the last two decades[13].

The UN did and continues to do good things in the world throughout its diverse contributions, but it seems to somehow fail on other grounds, such as in protecting individuals from appalling human rights abuses committed by people officially acting in its name[14]. Moreover, its member states themselves do not seem to address this problem in a more effective manner either.

What measures did the UN took up until now in order to address this widespread acknowledged problem? Did those measures prove to be effective? What about its

[8] Corinna Csáky, 'No One to Turn To : The under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers' (Save the Children UK 2008) 5 <http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/27_05_08_savethechildren.pdf> accessed 21 June 2016; Defeis (n 7) 187; Owen Bowcott, 'Report Reveals Shame of UN Peacekeepers' *The Guardian* (25 March 2005) <https://www.theguardian.com/world/2005/mar/25/unitednations> accessed 21 June 2016.
[9] 'UNGA "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"' (2005) UN Doc A/59/710' 8 <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/710> accessed 31 May 2016.
[10] ibid.
[11] ibid 25; for more information related to this issue see: Olivera Simić and Melanie O'Brien, '"Peacekeeper Babies": An Unintended Legacy of United Nations Peace Support Operations' (2014) 21 International Peacekeeping 345.
[12] Bowcott (n 8).
[13] Defeis (n 7) 189 and 190.
[14] Rosa Freedman, *Failing to Protect: The UN and the Politicisation of Human Rights* (C Hurst & Co Publishers Ltd 2014) xi; Róisín Sarah Burke, *Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility under International Law* (Martinus Nijhoff Publishers 2014).

member states? Do they have the proper internal laws which allows them to take steps and prosecute the perpetrators of sexual crimes committed outside of their own physical territory, by their own nationals sent to participate in UN peacekeeping missions on foreign territory? If so, are there any states where an effort was made in order to prosecute such crimes? Would there be any other alternatives to address such problems? For example, is there any way in which any international court could pressure the UN member states to seriously address this issue and ensure that victims of such crimes have access to an effective remedy?

The present study will attempt to answer the abovementioned questions and ascertain if there is any unexplored way which could help pressuring the UN member states into taking action and addressing the problem of sexual abuse and exploitation committed by personnel related to UN peacekeeping operations whilst in mission[15]. For this purpose, it will focus specifically on the case of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as Amended) (hereafter « ECHR ») and its member states' obligation to ensure the protection of human rights within their jurisdiction through the principle of extraterritorial application of the convention and its exceptions, this European regional human rights system being recognized for its most developed case-law on the topic[16], as for its proven general effectiveness[17].

As such, the first chapter of this paper will present the current situation regarding the measures undertook by the UN itself as a response to the issue of sexual abuse and exploitation by personnel related to UN peacekeeping operations and will address their effectiveness. Subsequently, countries who adopted a regulatory framework allowing the investigation and prosecution of perpetrators in such cases, and thus expanded their legal

[15] The study focuses on all personnel which is part of UN peacekeeping operations, therefore including peacekeepers part of the field missions, as well as other troops sent on the ground to offer assistance and support to the latters. See for example: 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2149(2014)> accessed 30 June 2016.
[16] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (1st edn, Oxford University Press 2011) 4.
[17] Rosa Freedman (n 14) 152.

jurisdiction outside of their physical borders, as well as those who actually prosecuted their citizens when accused of such crimes will be briefly discussed.

The second chapter will introduce the principle of extraterritoriality with a focus on the application recently made by the European court of human rights (hereafter « ECtHR »), since in the past decade we witnessed a tendency of this court to widen the principle of jurisdiction of states to some exceptional wrongful acts committed outside the state's territory. The application criteria developed by the ECtHR in these recent cases will be studied in depth, and duties of member states with regard to the ECHR particularly will be covered.

Lastly, the recent case of sexual abuses by Sangaris French Forces sent in Central African Republic (hereafter « CAR ») in order to assist the UN peacekeeping mission on the field[18] will be studied, with the purpose of verifying the hypothetical possibility of the application of the new principles of extraterritoriality developed by the ECtHR to this particular case.

This paper aims to verify if considering the new criteria developed by the ECtHR in the past few years would allow the latter to find that a member state of the Council of Europe (hereafter « CoE ») violated the ECHR when personnel related to UN peacekeeping operations committed sexual abuse or exploitation on civilians of the host country. Would this be a way of pressuring at least these countries to either begin respecting their positive obligations under the ECHR or to enhance them in their national legislation when there is a gap?

Therefore, the core of this study will be essentially the ECtHR application of its extraterritoriality criteria to cases of sexual abuse and exploitation by all kind of personnel involved in UN peacekeeping operations. As such, even if it will sometimes touch upon questions related to immunities of states, international organizations or individuals, it is

[18] 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' (n 15) 47.

important to underpin that these will not be deeply examined, nor will the issue of state responsibility in public international law be addressed, these issues falling outside the scope of the current study.

1. Current situation

What is the present situation regarding UN peacekeeping operations, the status of personnel related to the latter, the current situation with regard to sexual abuses and exploitation committed by some of it while on field mission, and mainly, what are the measures undertook until now by the UN itself to address this persistent issue? Are these measures effective?

1.1 UN Peacekeeping operations

In the preamble of the Charter of The United Nations (hereafter « UN Charter »**)**, the « people of the United Nations[19]» stated themselves as determined to « reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women[20]», but also « to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained[21]».

The first article of the UN Charter defines the purposes of the organization itself, and its very first part underpins that its aim is to « maintain international peace and security[22]». In order to do so, the UN Charter adds that the UN can the following:

> *(…) take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace[23];*

[19] United Nations, Charter of the United Nations 1945 [1 UNTS XVI].
[20] ibid.
[21] ibid.
[22] ibid.
[23] ibid.

This charter gives the UN Security Council the mandate to establish worldwide peacekeeping operations[24]. Although when doing so it doesn't need to invoke any particular chapter of the UN Charter, it appears that in the last years it has invoked chapter VII in situations where the host state found itself unable to maintain security on its own, being that this chapter contains special provisions for « Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression »[25]. The UN sees, in this context, the recourse to chapter VII of its charter also as « a statement of firm political resolve and a means of reminding the parties to a conflict and the wider UN membership of their obligation to give effect to Security Council decisions[26]».

Furthermore, since human rights were declared to have become « a core pillar of the United Nations[27]», the organization must additionally ensure their protection and promotion via their work[28]. This is a quite relevant fact, especially since the number of peacekeeping operations considerably increased after the fall of the wall of Berlin[29], and with it the number of human rights violations by its own personnel[30].

For the purposes of the current study, it is important to mention that the UN itself, as an international organization, enjoys immunity at all times[31]. The intention behind this principle was not to shield it from all responsibility, although some are questioning this

[24] United Nations, 'Mandates and the Legal Basis for Peacekeeping.' <http://www.un.org/en/peacekeeping/operations/pkmandates.shtml> accessed 6 April 2016.
[25] ibid.
[26] ibid.
[27] United Nations, 'Human Rights' (*United Nations Peacekeeping*) <http://www.un.org/en/peacekeeping/issues/humanrights.shtml> accessed 18 April 2016.
[28] ibid.
[29] United Nations, 'History of Peacekeeping - Post Cold-War Surge.' (n 3).
[30] Milena Petrova, 'Criminal Misconduct and Sexual Offenses Committed by UN Personnel During Peacekeeping Missions' (*Beyond Intractability*, February 2015) <http://www.beyondintractability.org/library/criminal-misconduct-and-sexual-offenses-committed-un-personnel-during-peacekeeping-missions> accessed 31 May 2016.
[31] For more detailed information about the topic and the possibilities for this immunity to be waived see: Jan Klabbers, *An Introduction to International Institutional Law* (2 edition, Cambridge University Press 2009) 131–152.

aspect, especially with given situations such as those in the recent cholera case in Haiti and the Mothers of Srebrenica ones[32].

UN peacekeepers are voluntary contributions of member states[33] and such operations are usually composed of experts, policeman and women, soldiers (military), volunteers and administrative staff. Moreover, the Security Council of the UN can also authorize, through the adoption of resolutions, while establishing peacekeeping missions, to countries who do not necessarily wish to be part of the official peacekeeping missions to still be able to offer their support to the latter by sending their troops on the field as well, as it was the case for example in 2014 in CAR[34].

With regard to the practical side of the peacekeeping personnel, the Handbook on United Nations Multidimensional Peacekeeping Operations states that the civilian police personnel along with the military personnel, while serving under the UN's operational control, remain members of their *national establishments* – without clearly specifying the meaning of such establishments – and, since while wearing their own national uniforms they also wear the UN blue helmets and insignia, they « are expected to conduct themselves exclusively in accordance with the international character of their mission[35] ». As goes for the civilian personnel involved in peacekeeping operations, this includes internal personnel from the UN's own system, such as United Nations Volunteers, which can either be recruited locally or internationally or can be simply loaned by the contributing states[36].

---

[32] Bruce Rashkow, 'Remedies for Harm Caused by UN Peacekeepers' (*American Society of International Law*, 2 April 2014) <https://www.asil.org/blogs/remedies-harm-caused-un-peacekeepers> accessed 6 April 2016.
[33] United Nations, 'Troop and Police Contributors' (*United Nations Peacekeeping*) <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml> accessed 18 April 2016.
[34] 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' (n 15); Peacekeeping Best Practices Unit, Department of Peacekeeping Operations and United Nations, 'Handbook on United Nations Multidimensional Peacekeeping Operations' 56 <http://walterdorn.net/pdf/Peacekeeping-Handbook_UN_Dec2003.pdf> accessed 18 April 2016.
[35] Peacekeeping Best Practices Unit, Department of Peacekeeping Operations and United Nations (n 34) 4.
[36] ibid.

Peacekeeping operations in their entirety, as well as peacekeeping missions in particular, are set up through the adoption of resolutions by the UN Security Council or by the UN General Assembly (hereafter « UNGA ») and are considered to be secondary organs of the UN[37]. The peacekeeping operations enjoy this organization's « status, privileges and immunities » according to article 105 of the UN Charter[38] and the Convention on the Privileges and Immunities of the UN adopted by its General Assembly on 13 February 1946[39]. As for the organization's staff members, they are designated by the Secretary-General and receive the status of officials under the latter, therefore benefiting from immunity for acts committed in their « official capacity » [40].

Further, the status and privileges of peacekeepers[41], as well as the codes of conduct they must follow are defined in the Status of Forces Agreement (hereafter « SOFA »), which are negotiated in a bilateral manner with each of the troop-contributing country (hereafter « TCC »), and which offer absolute jurisdiction to the latter. Therefore, this makes it impossible for the host countries – where the abuses take place – to prosecute those against whom complaints are brought[42]. The same treatment applies to troops who are not officially part of the field peacekeeping missions, but are on the field in order to offer their assistance to it[43], as is for example the case of French Sangaris Forces in CAR.

[37] Kjetil Mujezinović Larsen, 'Attribution of Conduct in Peace Operations: The "Ultimate Authority and Control" Test' (2008) 19 European Journal of International Law 509.
[38] United Nations Charter of the United Nations (n 19).
[39] United Nations, Convention on the privileges and immunities of the United Nations 1946.
[40] Ray Murphy, 'An Assessment of UN Efforts to Address Sexual Misconduct by Peacekeeping Personnel' (2006) 13 International Peacekeeping 531, 533.
[41] Peacekeepers also enjoy immunities during the peacekeeping missions. For more information, see: Róisín Burke, 'Status of Forces Deployed on UN Peacekeeping Operations: Jurisdictional Immunity' (2011) 16 Oxford University Press 63; William Thomas Worster, 'Immunities of United Nations Peacekeepers in the Absence of a Status of Forces Agreement' (2009) 47, 2008 Revue de Droit Militaire et de Droit de la Guerre <http://www.ismllw-be.org/session/2013_03_26%20Immunities%20of%20United%20Nations%20Peacekeepers%20in%20the%20Absence%20of%20a%20Status%20of%20Forces%20Agreement%20-%20W%20T%20WORSTER.pdf> accessed 13 July 2016.
[42] Muna Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions' (2009) 27 Berkeley Journal of International Law 127, 154.
[43] Peacekeeping Best Practices Unit, Department of Peacekeeping Operations and United Nations (n 34) 56.

1.2 Accusations of sexual abuse and exploitations by personnel related to UN peacekeeping operations[44]

Since 1948, 71 peacekeeping operations were deployed throughout the world, 16 being the number of those who are currently active. On 30 April 2016, the number of the uniformed personnel deployed was rising to 103,510 (meaning troops, police and military personnel) representing the contribution of 123 member countries, while the number of the total personnel (including civilians and volunteers) was estimated to 121,780[45].

With the increase of the deployment of peacekeeping operations after the fall of the Berlin Wall, the accusations against its personnel in general regarding sexual exploitation, abuse, human trafficking, child prostitution and other such grave crimes increased. The phenomenon started to gain public awareness in the early 1990s with scandals emerging with regard to peacekeeping operations in Bosnia and Herzegovina, East Timor, Mozambique, Cambodia, Liberia, Guinea, etc. The one related to the UN organization Mission in the Democratic Republic of Congo (known as MONUC) having caused a serious public uproar in 2004, leading to the UN Office of Internal Oversight Services (hereafter « OIOS ») investigating the issue[46]. Some of these allegations involved children as young as 12 years old, with whom peacekeepers in Liberia « were regularly having sex (…) sometimes in the mission's administrative buildings[47]», while those in the Democratic Republic of Congo « were said to have offered abandoned orphans small gifts – as little as two eggs from their rations, (…) for sexual encounters[48]». Various reports since, from Nongovernmental Organizations (hereafter « NGO(s) »)[49],

[44] For the purpose of the current study, the expression 'personnel related to UN peacekeeping operations' will be used in order to include all type of personnel involved in such operations being part of the administrative UN personnel, officially part of peacekeeping missions or pertaining to assistant troops to such missions. Moreover, this will also include civils, police, military and volunteers. For more information see: ibid.
[45] 'Peacekeeping Fact Sheet' (*United Nations Peacekeeping*, 30 April 2006) <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml> accessed 4 June 2016. Note: the number of civilian personnel not having been updated after 31 July 2015.
[46] Milena Petrova (n 30).
[47] Bowcott (n 8).
[48] ibid.
[49] Corinna Csáky (n 8).

independent actors[50], or even from the UN itself[51] continued to describe numerous such cases.

One of the first time this type of abuse was made public was in 1993 with such allegations made against personnel related to the UN peacekeeping operation in Cambodia. The reaction of the then the UN Special Representative to that operation, Yasushi Akashi, added fuel to the flame when his response to this matter was the now very well-known and widely criticized phrase: « Boys will be boys[52] », which gave birth to what some now call the *boys-will-be-boys syndrome*[53].

All these previous facts ended up very soon being acknowledged and confirmed by then the UN Secretary-General Annan[54], and following the outcry of the international community and several NGOs, the UN started to take action and try to combat this phenomenon which was rapidly starting to damage its image[55]. However, it has not yet succeeded, since these allegation only continued to rise throughout the following years (see Figure 1 below) [56].

---

[50] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka, 'Taking Action on Sexual Exploitation and Abuse by Peacekeepers - Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic' (United Nations 2015) <http://www.un.org/News/dh/infocus/centafricrepub/Independent-Review-Report.pdf> accessed 2 June 2016.

[51] See for example: 'UNGA "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"' (2005) UN Doc A/59/710' (n 9); 'Secretary-General's Bulletin, "Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2003) UN Doc ST/SGB/2003/13' <http://www.unhcr.org/protection/operations/405ac6614/secretary-generals-bulletin-special-measures-protection-sexual-exploitation.html> accessed 7 April 2016.

[52] Horwood Ward, J. C, Shipman, P., McEvoy, C. and Rumble, L., 'The Shame of War. Sexual Violence against Women and Girls in Conflict.' (United Nations Office for the Coordination of Humanitarian Affairs 2007) 79 <http://lastradainternational.org/lsidocs/IRIN-TheShameofWar-fullreport-Mar07.pdf> accessed 1 July 2016.

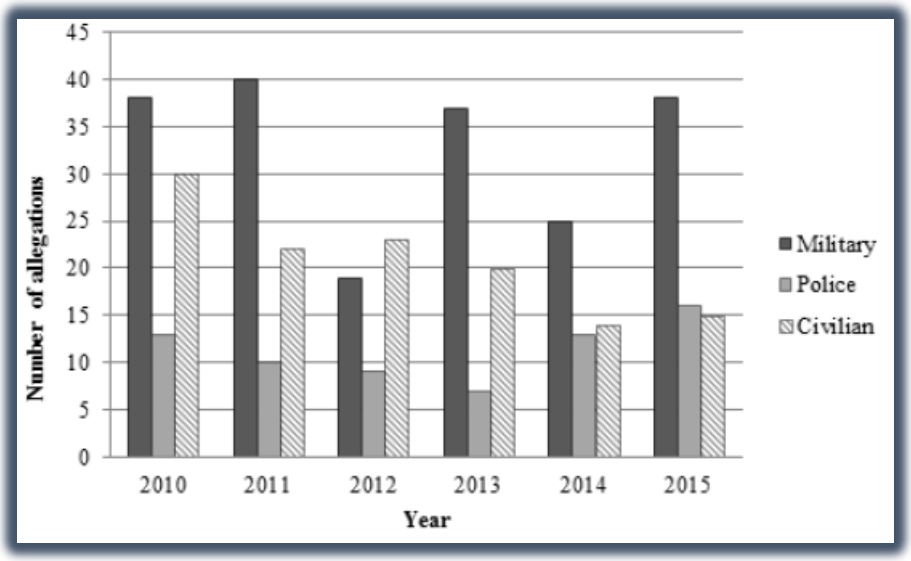
[53] Melanie O'Brien, 'Overcoming Boys-Will-Be-Boys Syndrome: Is Prosecution of Peacekeepers in the International Criminal Court for Trafficking, Sexual' <http://lup.lub.lu.se/student-papers/record/1554856> accessed 13 July 2016.

[54] Defeis (n 7) 187.

[55] ibid 188–194.

[56] 'UNGA "Report of the Secretary-General on the Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2016) UN Doc A/70/729' 8 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_70_729.pdf> accessed 1 June 2016.

Figure 1
Total allegations by category of personnel
for UN peacekeeping missions deployed between 2010 and 2015[57]



As such, the last annual *Report of the Secretary-General on the Special Measures for Protection from Sexual Exploitation and Sexual Abuse* dated 16 February 2016, confirms that the allegations of sexual abuse and exploitation by the personnel related to UN peacekeeping operations in general increased considerably in 2015, members of military troops being the ones against whom most of the allegations were made (Figure 1):

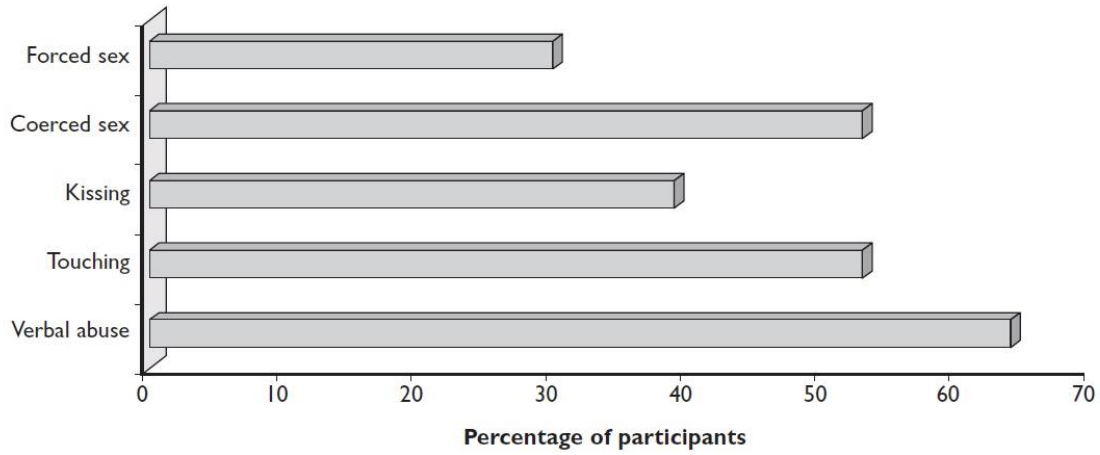
> *The evaluation on the enforcement and remedial assistance efforts for sexual exploitation and abuse by United Nations and related personnel in peacekeeping operations noted the persistence of sexual exploitation and abuse allegations, despite an overall downward trend since 2009. Between 2008 and 2013, the largest number of allegations involved military personnel, although civilians accounted for a percentage disproportionate to their numbers. While civilians constituted 18 per cent of mission personnel, they accounted for 33 per cent of allegations. Allegations of sexual exploitation and abuse were mostly reported in four missions: MINUSTAH, MONUSCO, UNMIL and UNMISS. The evaluation identified several factors affecting the current situation, including: delays in completing investigations; confusion of roles in the sexual exploitation and abuse enforcement architecture and enforcement delays; and variations in sanctions, which weakened the commitment to zero tolerance.*[58]

[57] ibid.
[58] 'UNGA "Report of the Office of Internal Oversight Services on Peace Operations for the Period from 1 January to 31 December 2015" (2016) UN Doc A/70/318' 25 <https://oios.un.org/resources/2016/03/IUfbHC0n.pdf> accessed 1 June 2016.

As regards children, a 2008 report of Save the children UK underpinned the following forms of sexual abuse identified by the organization during a field study including group discussions with victims and meetings with various NGOs (Figure 2) [59]:

Figure 2

Type of abuse by personnel related to UN peacekeeping operations on children, most commonly identified by Save the Children UK in 2008[60]



What measures did the UN took to fight and prevent this phenomenon? Were these measures effective?

1.3 Measures undertook by the UN to address the issue

As soon as the issue of sexual abuse and exploitation by personnel related to UN peacekeeping operations gained important attention from global media[61], the organization started to directly address it. Therefore, in 2002, the UNGA adopted what is known as the resolution A/RES/57/306, in which it requested to the UN Secretary-General to issue a bulletin on that specific topic, and through which it also recognized « the shared responsibility, within their respective competencies, of United Nations organizations and agencies and troop-contributing countries to ensure that all personnel are held

[59] Corinna Csáky (n 8) 6.
[60] ibid.
[61] Peacekeeping Best Practices Unit, Department of Peacekeeping Operations and United Nations (n 34).

accountable for sexual exploitation and related offences committed while serving in humanitarian and peacekeeping operations[62] ». Through this resolution it also officially requested to the OIOS to « maintain data on investigations into sexual exploitation and related offences, irrespective of age and gender, by humanitarian and peacekeeping personnel, and all relevant actions taken thereon[63] ».

This resolution followed the *Report of the Office of Internal Oversight Services on the investigation into sexual exploitation of refugees by aid workers in West Africa* transmitted by the UN Secretary-General to the UNGA, in which the importance of accountability for such crimes was then already underpinned as follows:

> *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[64].*

In 2003, the UN Secretary-General Kofi A. Annan issued an administrative disclosure establishing a *zero-tolerance policy* and stating that such conduct by UN staff, « including staff of separately administrated organs and programs of the United Nations[65] » is prohibited and that « sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including dismissal[66] », these acts violating « universally recognized international legal norms and standards[67] ». Moreover, he added that if « after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation

---

[62] 'UNGA Res 57/306 (22 May 2003) Un Doc A/RES/57/306' <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SE%20ARES%2057%20306.pdf>.
[63] ibid.
[64] 'UNGA "Report of the Secretary-General on the Activities of the Office of Internal Oversight Services" (2002) UN Doc A/57/465' <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SE%20A%2057%20465.pdf> accessed 7 April 2016.
[65] 'Secretary-General's Bulletin, "Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2003) UN Doc ST/SGB/2003/13' (n 51) 1.
[66] ibid 2.
[67] ibid.

with the Office of Legal Affairs, be referred to national authorities for criminal prosecution.[68] ». Following this statement and every year since, the Secretary-General began to issue an annual report on this specific issue in which he also addresses the measures taken by the organization in order to combat this phenomenon.

Sexual abuses and exploitation allegations by personnel related to UN peacekeeping operations continued to arise after this initiative[69], and in 2004, the Secretary-General decided to appoint Prince Zeid Ra'ad Zeid Al-Hussein, then a Permanent representative of Jordan in the organization, as his Adviser on Sexual Exploitation and Abuse by UN Peacekeeping Personnel. The latter conducted an in depth investigation into the worrying situation and produced a report published in March 2005[70] in which he affirmed having found the following human rights violations:

> *pervasive abuse and exploitation of women and girls, most of which involved trading sex for money, food, or jobs. Just as disturbing were acts of rape disguised as prostitution, where victims were given gifts after being assaulted in order to give the impression that the sex act was one of prostitution rather than rape. Victims of abuse were often abandoned with children to care for, so-called "peacekeeper babies," without any family to care for them.*[71] (citations omitted)

The UN Security Council described this report as « the first comprehensive analysis of sexual exploitation and abuse by UN peacekeeping personnel [72] » which presented what it then called « an alarming picture of a wide spread and largely tolerated phenomenon[73] ».

---

[68] ibid 3.
[69] "In early 2004, media reports indicated serious abuses perpetrated by personnel of the UN Mission in the Democratic Republic of Congo (MONUC). The allegations included rapes, having sex with children, as well as wide spread coercion of vulnerable women and children into sex in exchange for food or money. Similar allegations surfaced also with regard to the peacekeeping operation in Burundi and subsequently other missions, including Haiti and Liberia". See: Security Council Report, 'Update Report No. 3: Sexual Exploitation and Abuse by UN Peacekeeping Personnel' (20 February 2006) <http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTIsG-b-1429245.php?print=true> accessed 31 May 2016.
[70] 'UNGA "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"' (2005) UN Doc A/59/710' (n 9).
[71] Defeis (n 7) 188.
[72] Security Council Report (n 69).
[73] ibid.

Despite these efforts, the phenomenon continued to widespread throughout the following years, and the zero-tolerance policy to remain mostly ignored[74].

However, the UN continued to seek for solutions and ended up developing three main known strategies in order to address this important issue: preventive measures consisting mainly in mandatory pre-deployment training of the troops, enforcement of its standards of conduct and remedial actions. The organization additionally started conducting awareness-raising campaigns and investigations which could lead to disciplinary sanctions, where individuals who are part of its troops can be also repatriated. However, the UN does not have any judicial power over those who commit such crimes, such jurisdiction belonging solely to the TCCs[75].

Moreover, in 2005, the UN created a Conduct and Discipline Unit based at its headquarters, with the mission of providing oversight « on conduct and discipline issues in peacekeeping operations and special political missions[76] ». This unit works in collaboration with the Conduct and Discipline Teams and Focal Points who are finding themselves directly on the ground. Additionally, a Memorandum of understanding concluded between TCCs and the organization lays out the latter's obligations as regard to conduct and discipline matters[77].

Nonetheless, it is important to stress that none of the abovementioned measures are legally binding on the member states of the UN[78] and that no clear legal framework exists

[74] Defeis (n 7) 191.
[75] United Nations, 'Conduct and Discipline' (*United Nations Peacekeeping*) <http://www.un.org/en/peacekeeping/issues/cdu> accessed 31 May 2016.
[76] United Nations, 'Fact Sheet on Sexual Exploitation and Abuse' 1 <http://www.un.org/en/peacekeeping/documents/2015factsheet.pdf> accessed 31 May 2016.
[77] ibid.
[78] Carla Ferstman, 'Criminalizing Sexual Exploitation and Abuse by Peacekeepers' (2013) Special Report 335 United States Institute of Peace 11 <https://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf> accessed 2 June 2016.

to cover peacekeepers[79]. The various UNGA resolutions adopted thorough the past two decades, which urged member states to take serious actions in order to address the issue of accountability in such cases of serious crimes allegations by means of cooperation, and to facilitate the exchange of information between them, as well as with the UN, as well as to facilitate investigations and further prosecution by the TCCs, underlined the importance of criminal accountability. However, nothing proved until now that their adoption led to greater accountability[80].

What can be considered as being the most drastic measure undertook by the UN up to now was the March 2016 decision of its Security Council to endorse a decision of the UN Secretary-General which was aiming to repatriate entire troops in case of widespread systemic sexual abuse by peacekeepers « when there is credible evidence of widespread or systemic sexual exploitation and abuse by that unit[81] ». The same is requested in cases where:

> *a particular troop-contributing country whose personnel are the subject of an allegation or allegations of sexual exploitation and abuse has not taken appropriate steps to investigate the allegation and/or when the particular troop- or police-contributing country has not held the perpetrators accountable or informed the Secretary-General of the progress of its investigations and/or actions taken*[82]

However, after reading these paragraphs, one can only wonder what does the UN Security Council mean here by employing the vague terms « credible evidence » and « systematic abuse »? It clearly does not give any indication regarding their thresholds. The effectivity of this resolution still remains to be proven and it depends on how and if the UN will implement it in the future.

[79] Rosa Freedman, 'How Can We Hold the UN Accountable for Sexual Violence?' (*Code Blue*, 7 February 2016) <http://www.codebluecampaign.com/latest-news/2016/2/7> accessed 31 May 2016.
[80] Carla Ferstman (n 78) 11.
[81] 'UNSC Res 2272 (11 March 2016) UN Doc S/RES/2272' <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2272(2016)> accessed 31 May 2016.
[82] ibid.

Regarding the vetting of the UN personnel, a database system named Misconduct Tracking System is used in order to record misconduct in previous assignments during field missions, which is confidential and was only put in place in 2008[83]. However, in an independent report of 2015, it is stated that there is no system which currently efficiently tracks all allegations and findings against UN peacekeepers. The report considers that these should be tracked by the Office of the High Commissioner for Human Rights (hereafter « OHCHR ») in a centralized system and always be updated so it can be used while screening troops before their deployment on the field[84], underpinning that up until now, these cases were mainly reported by NGOs[85], whistleblowers or other humanitarian agencies, this lack of transparency clearly not contributing to increase the incentive for the TCCs to undertake full and complete investigations and prosecutions into the abovementioned allegations[86].

The UN also provides with an internal administrative process, which also includes review boards. Furthermore, the SOFAs, which are signed between these type of missions and the host countries usually provide for a standing claims commission. Nevertheless, it is important to underline that no such commission was ever put in place up until now. These are not however to be confounded with the « Local Claims Review Boards » created under Article VIII, Section 29 of the 1946 Convention on Privileges and Immunities of the

[83] United Nations, 'Conduct and Discipline' (n 75).
[84] M. Deschamps, H.B. Jallow, Y. Sooka, 'Taking Action on Sexual Exploitation and Abuse by Peacekeepers - Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic' xii, 77, 94 <http://www.un.org/News/dh/infocus/centafricrepub/Independent-Review-Report.pdf> accessed 2 June 2016.
[85] Martina Vandenberg, 'Bosnia and Herzegovina Hopes Betrayed: Trafficking of Woman and Girls to Bosnia and Herzegovina for Forced Prostitution' (2002) 14 Human Rights Watch 74; Amnesty International, 'Kosovo (Serbia and Montenegro): "So Does It Mean That We Have the rights?" Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo' (Amnesty International 2004) <https://www.amnesty.org/en/documents/document/?indexNumber=eur70%2f010%2f2004&language=en> accessed 13 July 2016; Sarah E. Mendelson, 'Barracks and Brothels | Center for Strategic and International Studies' (Center for Strategic and International Studies (CSIS) 2005) <https://www.csis.org/analysis/barracks-and-brothels> accessed 13 July 2016.
[86] Carla Ferstman (n 78) 12.

United Nations, which are highly criticized for their lack of independence and impartiality, being composed only of UN personnel[87].

A policy of « naming and shaming » of TCCs was proposed by the UN Secretary-General in 2015[88], as well as the complementary jurisdiction of the host states, both having been refused, mainly blocked by the Special Committee on Peacekeeping Operations[89]. However, in 2016, the Secretary-General, in its annual report, mentioned for the first time TCCs names related to such allegation against their personnel related to UN peacekeeping operations[90].

As previously mentioned, the entire responsibility to prosecute those who are facing allegations of sexual abuse and exploitation during their UN field missions belongs to the TCCs[91]. As Burke underlines, UN officials during peacekeeping missions « are granted immunity from criminal prosecution by the host State by a plethora of legal instruments[92] » and are therefore seldom held accountable for criminal accusations made against them[93]. Moreover, there is a possibility for the immunity to be waived in some cases by the UN Secretary-General in order to permit the host states to prosecute them

[87] S. Sheeran, Prof. L. Zegveld, Dr. M. Zwanenburg, E. Wilmshurst, 'Peacekeeping and Accountability' (Chatham House - The Royal Institute of International Affairs 2014) 3 <https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140528PeacekeepingAccountability.pdf> accessed 1 June 2016.
[88] 'UNGA "Report of the Secretary-General on the Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2015) UN Doc A/69/779' 15 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/041/76/PDF/N1504176.pdf?OpenElement> accessed 2 June 2016.
[89] Rembert Boom, 'Impunity of Military Peacekeepers: Will the UN Start Naming and Shaming Troop Contributing Countries?' (2015) 19 American Society of International Law <https://www.asil.org/insights/volume/19/issue/25/impunity-military-peacekeepers-will-un-start-naming-and-shaming-troop> accessed 2 June 2016.
[90] 'UNGA "Report of the Secretary-General on the Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2016) UN Doc A/70/729' (n 56) (see annexes).
[91] Milena Petrova (n 30).
[92] Burke (n 41) 63.
[93] Milena Petrova (n 30).

for crimes[94], however this is only possible as regards to civilians, while for military personnel, the TCCs maintain exclusive jurisdiction[95].

This is considered in literature as being the most important problem related to this pressuring issue, since there is no consequence for countries who fail to prosecute, aside being put the fact that the TCCs generally fail to inform the UN of the process in most cases. Further, there is also the problem of jurisdiction which is of great importance, most UN TCCs not even having laws allowing extraterritorial application of their criminal law framework, especially when it comes to civil personnel sent on mission[96].

1.4 Prosecution by the TCCs

As presented in the previous sub-sections of the current chapter, the entire judicial jurisdiction for crimes of sexual aggression and exploitation by personnel related to UN peacekeeping operations is left in the hands of the TCCs. Moreover, such personnel originates from various backgrounds and can be categorized in mainly military and civil personnel (including volunteers and police), the applicable legal frameworks in case of such allegations at the national level being therefore very different.

As such, the military personnel is subject to the TCCs military framework, which usually extends its jurisdiction outside the latter's borders. Therefore, a member of the military who is participating in a UN peacekeeping operations and is accused of having committed crimes while on mission can, in theory, be prosecuted in its own country: « The state of nationality can hold a court-martial for the offending soldier for any act that contravenes the applicable law. [97]». However a report of an independent American organization stated

[94] Melanie O'Brien, 'Protectors on Trial? Prosecuting Peacekeepers for War Crimes and Crimes against Humanity in the International Criminal Court' (2012) 40 International Journal of Law, Crime and Justice 223.
[95] Anthony J. Miller, 'PERSPECTIVE: Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations' (2006) 39 Cornell International Law Journal 71, 75.
[96] Carla Ferstman (n 78) 4.
[97] ibid 10.

in 2013 that in this case « TCCs have a poor record of holding their personnel accountable for such violations. [98] » (citation omitted).

The situation is notably different in the case of civil personnel and police, where criminal national law finds application, since this type of law is first of all territorial and therefore « it does not apply to acts that take place outside the country, a few specific enumerated exceptions aside[99] », sexual abuse and exploitation usually not being recognized as exceptions[100] (citations omitted).

It results that the classical principle of territoriality in what regards the applicability of national legal frameworks can be an obstacle in the way of punishing the perpetrators of such crimes in cases where the TCCs to which the accused belong didn't extend their criminal laws' application to situations taking place outside their national territory. This could be the example of Canada and United States:

> *For instance, under Canadian law, the limited exceptions that allow for extraterritorial jurisdiction focus on when an international legal obligation to prosecute exists or a prosecution relates to fulfilling Canada's essential interests (…) At present, it is only possible to prosecute the felony offenses of civilian employees, contractors, and contract employees of the Department of Defense and other federal agencies to the extent that their employment relates to supporting the mission of the Department of Defense overseas. The law does not extend to civilians working in support of the mission of other agencies*[101]. (citations omitted)

This legal type of gap gained international attention in the beginning of 2000, when the case of Dyncorp contractors sent as peacekeepers in Bosnia and Herzegovina in the 1990s reportedly linked to a ring of human trafficking were not prosecuted by the United States[102]. Even at the end of 2013, a United States Institute of Peace's special report underpinned that that the situation remained quite the same ever since and efforts to change the law did not yet succeed[103].

[98] Defeis (n 7) 206–207.
[99] Carla Ferstman (n 78) 10.
[100] ibid.
[101] ibid.
[102] ibid.
[103] ibid.

Therefore, prosecution against civilian-type of UN peacekeepers depends entirely of the country's extraterritoriality legal frame in the criminal sector. Further, some countries only prosecute in cases where « the conduct constitutes a comparable crime in the host state, thus making prosecutions contingent on the legislation of countries with fragile legal systems emerging from conflict[104] » (citations omitted).

The *Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic* published in December 2015 by the UN asserted that the current general framework encompassing its peacekeeper's prosecutions for sexual crimes committed during their field missions is still « ineffective and inadequate[105] ».

As for the member states, it is important to underpin that it is practically impossible to give a full list of TCCs who extended their jurisdiction in order to be able to prosecute those sent in capacity of civilians and police to take part in UN peacekeeping missions in third countries.

1.5 What happens in practice?

In February 2016, the Secretary-General of the UN released its annual report stating that he « remains distressed by continuing instances of sexual exploitation » which arose during 2015[106]. Moreover, the report indicates that comparing to the precedent year, there was an increase in the number of allegation of sexual abuse and exploitation by the UN personnel (99 versus 80), out of which 69 were reported against personnel of ten different peacekeeping missions, 55% of them being reported against personnel of two of these missions[107]. As goes for investigations, the report informs that a third of the total were referred to TCCs for investigation purposes and in eight of these cases the UN had to

[104] ibid.
[105] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) xi.
[106] 'UNGA "Report of the Secretary-General on the Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2016) UN Doc A/70/729' (n 56) 2.
[107] ibid 3–4.

undertake them itself, either because the TCCs didn't reply or because it declined to proceed as requested:

> *Thirty-two allegations involving at least 49 contingent personnel were referred to troop-contributing countries for investigation. In 24 instances, the Member States elected to investigate the matter on their own or in coordination with the United Nations. In eight instances, investigations were undertaken by the United Nations in the absence of a reply or the Member State having declined to investigate*[108].

However, some sources relate that there would be more such cases, some of them being simply unreported: « Most of the women interviewed by The Post said they did not report their cases to the United Nations because they felt ashamed and did not think the organization would be able to help them.[109] »

It is important to note that this last UN Secretary-General's report is the first one where allegations of sexual assault and exploitations against locals during its peacekeeping operations were clearly related to TCCs, the latter's names having been made public as regards to previous year's allegations, European countries such as Slovakia and Germany being as well inscribed on the list. However, the report indicates for almost all of these cases that information regarding the status of investigations, both from the side of the UN and TCCs is still pending. In some of these cases, one can note that interim actions were took, such as repatriation and/or suspension of payments[110]. Unlike this last report, as far as it goes for previous years, the countries involved were never officially named in the UN Secretary-General's annual's reports. As such, transparency is yet another problem which has been the subject of severe critique in the December 2015 *Taking Action on Sexual Exploitation and Abuse by Peacekeepers - Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic*[111]. Therefore, it is very difficult, even sometimes impossible, to find

[108] ibid 4.
[109] Kevin Sieff, 'The Growing U.N. Scandal over Sex Abuse and "peacekeeper Babies"' *Washington Post* (27 February 2016) <http://www.washingtonpost.com/sf/world/2016/02/27/peacekeepers/> accessed 3 June 2016.
[110] 'UNGA "Report of the Office of Internal Oversight Services on Peace Operations for the Period from 1 January to 31 December 2015" (2016) UN Doc A/70/318' (n 58) 729.
[111] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) xii.

official detailed information regarding cases where investigations were led by the TCCs or prosecutions were indeed intended. Such information « is patchy and available primarily through anecdotal public news reports [112] » and:

> *most information has come from outside of the UN; indeed, Amnesty International exposed the latest allegations against MINUSCA, following a long-tradition of NGOs being the main sources of information regarding sexual violence committed by peacekeepers.*[113]

Moreover, only some cases ended up gaining media coverage, such as in 2012 the case of three Pakistani officers – part of the MINUSTAH – who were prosecuted and found guilty of sexual abuse of a 14 years old Haitian boy, two of them receiving a one year imprisonment sentence, which was considered by many as very low and quite disproportionate in comparison with the committed crime.[114]

This previous case is further considered to be an « exception to the rule[115] », since in other cases of such allegations, and even sometimes despite credible evidence, prosecutions did not take place. This was for example the case of Moroccan troops serving in Côte d'Ivoire in 2007, where the evidence including DNA conclusive tests ended up being considered inconclusive, and resulting in the government dropping all charges against the defendants.

As goes for the 2011 allegations of sexually abuse of an 18 years old boy during the mission in Haiti against Uruguay's peacekeepers, despite the existence of video footage proving the perpetration of the crime, the accused soldiers were not charged with sexual assault, but with a lesser offence[116]. Following the media coverage and public outcry which followed this court decision, the Uruguay's president issued a public apology in this regard[117].

---

[112] Carla Ferstman (n 78) 4.
[113] Rosa Freedman (n 79).
[114] 'MINUSTAH Officers Found Guilty of Rape – But Get Just One Year in Prison' (*Center for Economic and Policy Research*, 13 March 2012) <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/minustah-officers-found-guilty-of-rape-but-get-just-one-year-in-prison> accessed 3 June 2016.
[115] Carla Ferstman (n 78) 4.
[116] 'Uruguay Marines Charged over Haiti Abuse' *BBC News* (24 September 2012) <http://www.bbc.com/news/world-latin-america-19708878> accessed 21 June 2016.
[117] Carla Ferstman (n 78) 4.

The allegations of being involved in a child prostitution ring by Indian peacekeepers in Democratic Republic of Congo did not even result in prosecution[118].

A similar attitude was adopted in 2007 regarding Sri Lankan MINUSTAH soldiers and more recently, Uruguayan repatriated troops from the same peacekeeping mission:

> *In 2007 over 100 Sri Lankan MINUSTAH soldiers were repatriated (PDF) after allegations of "transactional sex with underage girls". To this date no information on if they were ever prosecuted has been made public. More recently, five Uruguayan MINUSTAH troops were repatriated and jailed after a cell phone video showing them sexual assaulting a young Haitian man was reported by the press. The soldiers have since been released from jail and the trial has stalled[119].*

In 2016, a UN official stated in a public declaration that a number of countries did undertook such prosecutions, according to the then UN Under-Secretary-General for Field Support, Atul Khare, gave the example of Egypt, who demonstrated the « swiftest example of justice[120] » by imposing a five year imprisonment sentence to the perpetrators found guilty in this process. The case of Bangladesh was also cited in this declaration, where a soldier received a sanction of one year for having had sex with a minor while on mission, and so was the case of the Republic of South Africa, country which took steps in 2016 in prosecuting its soldiers from the peacekeeping mission in the Democratic Republic of Congo[121], known as MONUSCO[122]. Mr. Khare additionally stated that this « demonstrates the seriousness with which the Member states take their responsibility[123] ». However, this information is only partial and these mentioned cases in which perpetrators were tried and convicted for their crimes by their TCCs do not change the fact that most TCCs still do not seem to even have the proper extraterritorial jurisdiction to try their

---

[118] ibid.
[119] 'MINUSTAH Officers Found Guilty of Rape – But Get Just One Year in Prison' (n 114).
[120] 'Prosecutions in UN Sex Abuse Cases Underway', *United Nations Radio* (13 May 2016) <http://www.unmultimedia.org/radio/english/2016/05/prosecutions-in-un-sex-abuse-cases-underway/#.V1FrMUbl8wN> accessed 6 June 2016.
[121] ibid.
[122] The official name of the mission is the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo. For more information see: 'UNSC Res 1925 (28 May 2010) UN Doc S/RES/1925' <http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1925(2010)> accessed 13 July 2016.
[123] (n 120).

civilians against whom such allegations might arise. Nevertheless, will these cases be the beginning of a new vague of investigations and prosecutions for such crimes, at least for some of the personnel related to UN peacekeeping operations?

In that regard, it is important to stress that even when investigations and prosecutions by the TCCs did take place, in the past it was done considerably far away from the crime scenes and from where the witnesses location, fact which can weaken transparency in favor of the latter[124]. Further, the quality of investigations is in itself – especially the one made by the TCCs – the subject of strong critique, first, because of the lack of cooperation of the UN with the TCCs[125], but also because of the practical difficulties of assessing the evidence[126], such as would be the case of witness interrogation.

Another problem underlined in literature is that it appears that those against whom allegations of sexual abuse and exploitation are brought are in most cases solely repatriated. Added to that is the negotiation of the SOFA between the organization and the host states, which foresees that the jurisdiction to prosecute military personnel for such crimes belongs exclusively to the TCCs[127]. In these latter cases, the Secretary-General does not have any power to waive the latter's immunity[128]. As for UN's member states, they are not open to allow the UN or the host state to exercise jurisdiction on the personnel that they send to be part of peacekeeping operations[129]. However, despite the fact that the UN peacekeeping Model SOFA requires from TCCs to give assurance to the Secretary-General that the cases will be further investigated and if necessary the perpetrators prosecuted, this has rarely been the case in practice.[130]

[124] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) xii.
[125] ibid v.
[126] Carla Ferstman (n 78) 4.
[127] Burke (n 41); 'UNGA "Criminal Accountability of United Nations Officials and Experts on Mission" (11 September 2007) UN Doc A/62/329' <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/502/05/PDF/N0750205.pdf?OpenElement> accessed 13 July 2016.
[128] Defeis (n 7) 206; Ola Engdahl, *Protection of Personnel in Peace Operations: The Role of the 'Safety Convention' Against the Background of General International Law* (Martinus Nijhoff Publishers 2007) 182.
[129] Defeis (n 7) 206.
[130] ibid 206–207.

1.6 Conclusion

As we have seen in the current chapter, allegations of sexual abuse and exploitation by personnel related to UN peacekeeping operations keep being made, and they are even on the rise. Measures undertook up until now by the UN are non-legally binding and therefore were proven to be non-effective:

> (…) *accountability remains the exception to the rule, new abuses continue to be reported, and the business of sexual exploitation and abuse in peacekeeping continues. The inevitable result of complacency and unimplemented strategies is impunity among peacekeepers*[131]

Moreover, the entire criminal jurisdiction over peacekeeping personnel in general is completely left in the hands of the TCCs, no subsidiary solution existing up to this date. Therefore, it is totally up to the latter to prosecute the perpetrators, no real consequence existing in the contrary case, and in practice, prosecutions were proven to be very rare[132].

Added to that is the existence of an important jurisdictional gap regarding the principle of extraterritoriality in many such cases, which makes it even impossible for the TCCs to investigate and prosecute their nationals sent as police and civilians to be part of UN peacekeeping operations.

What other solutions are out there which would contribute to address the issue of human rights violations committed by personnel related to UN peacekeeping operations?

[131] Carla Ferstman (n 78) 2.
[132] Rembert Boom (n 89).

2. Extraterritoriality principle and human rights law

2.1 Preliminary remarks

International law is considered to have three important pillars: « sovereignty, non-intervention and cooperation[133] ». As such, for the purpose of the current study, a more explicit and relevant definition of sovereignty could be the following:

> *(...) it is an essential aspect of sovereignty that all states should have supreme control over their internal affairs, subject to the recognized limitations imposed by international law. These limitations include (…) the international law of human rights and the rules forbidding the use of force. However, no state or international organization may intervene in matters that fall within the domestic jurisdiction of another state. The concept of state sovereignty was outlined, among other things, in a declaration on Principles of International Law (Resolution 2625), proclaimed by the General Assembly of the United Nations in 1970[134].*

In the past years, the principle of sovereignty lost more and more ground when it came to human rights violations throughout the planet, the individual starting to occupy a more important place in the tribunals' debates to the detriment of the states[135]. As Milanovic underpins, states' actions always had an impact on individuals situated on foreign land:

> *Our culture has been permeated by law generally and human rights specifically to such a level that even those state acts that have hitherto been considered as the ultimate expressions of sovereign prerogative have become exposed to human rights scrutiny, in public discourse as well as in courts[136].*

As for extraterritoriality, it can be defined as a « situation in which state powers (legislative, executive or judicial) govern relations of law situated outside the territory of

---

[133] Hervé Ascensio, 'Contribution to the Work of the UN Secretary-General's Special Representative on Human Rights and Transnational Corporations and Other Businesses - Extraterritoriality as an Instrument' 2 <https://www.univ-paris1.fr/fileadmin/IREDIES/Contributions_en_ligne/H._ASCENSIO/Extraterritoriality__Human_Rights_and_Business_Entreprises.pdf> accessed 19 June 2016.
[134] Jonathan Law and Elizabeth A. Martin, 'A Dictionary of Law' <http://www.oxfordreference.com/view/10.1093/acref/9780199551248.001.0001/acref-9780199551248-e-3701> accessed 19 June 2016.
[135] Marko Milanovic (n 16) 1.
[136] ibid 5.

the state in question[137] ». Further, for the purpose of the present study, the extraterritoriality application of human rights such as explained by Milanovic is relevant:

> *Extraterritorial application simply means that at the moment of the alleged violation of his or her human rights the individual concerned is not physically located in the territory of the state party in question, a geographical area over which the state has sovereignty or title. Extraterritorial application of a human rights treaty is an issue that will most frequently arise from an extraterritorial state act, i.e. conduct attributable to the state, either of commission or of omission, performed outside its sovereign borders—for example, the killing of a suspected terrorist in Pakistan by a US drone. However—and this is a crucial point—extraterritorial application does not require an extraterritorial state act, but solely that the individual concerned is located outside the state's territory, while the injury to his rights may as well take place inside it*[138].

Therefore, this principle has *inter alia* as its core the individual, wherever he may find himself, and its purpose is mainly to ensure the protection of its own freedoms and rights in cases where its own state's jurisdiction is not empowered to do so, either due to its lack of clear extraterritorial application of its national law, of the diplomatic protections that perpetrators might benefit from, or for other such reasons. Without the development and application of this principle by the courts, the existence of important legal loopholes would be freely permitted and so would be the creation of a sort of – *accidental* or not – immunity for individuals and states affecting human rights of individuals outside their territory, which would consequently raise them above the law.

It is important to mention that as for human rights treaties themselves, in general, they do not mention much regarding their extraterritorial application. Milanovic underlines that some such treaties usually go only as far as mentioning that the signatory state has to respect its treaty obligations towards individuals falling within their jurisdiction or found on their territory, such as is the case for the ECHR and the International Covenant on Civil and Political Rights[139]. Moreover, in international public law in general, there is no such rule or presumption for, nor against, the principle of extraterritoriality, each treaty

[137] Hervé Ascensio (n 133) 1.
[138] Marko Milanovic (n 16) 8.
[139] ibid 7 and 8.

having therefore to be looked at in the light of its context, object and purpose[140]. In consequence, the courts are those left with the burden of deciding, upon all circumstances of a given case, in which case the extraterritoriality principle applies.

One of the courts called to decide more abundantly on such issues is the ECtHR[141]. Plus, this regional court manifested in the past decade a clear tendency to expand the principle of jurisdiction of States to some exceptional wrongful acts committed outside their own territory. These principles were not always coherent[142], its decisions being sometimes described as amounting to « a jurisprudence of (at times quite unprincipled) compromise, caused mostly by the Court's understandable desire to avoid the merits of legally and politically extremely difficult cases by relying on the preliminary issue of extraterritorial application[143] ». However, they consist, in our opinion, in an advancement in the area of human rights violations, which is why their analysis will be conducted more in depth in the following subsection.

2.2 The principle of extraterritoriality as applied by the ECtHR

> *The Court's jurisprudence on the subject is a source of endless fascination. Like any good thriller, its twists and turns leave the observer suspended in fearful anticipation on a never ending quest for legal certainty*[144].

Among all human rights regional systems, the European one is known as being the most developed and efficient, despite its flaws such as backlog and lack of court's enforcement powers. This system was created in 1953, once with the coming into force of the ECHR, and therefore with the creation of the ECtHR. Some authors, such as Freedman, argue that the power of this system, and the fact that so many member countries actually respect and implement the ECtHR's decisions lays in that the countries who want to be members

[140] ibid 10.
[141] ibid 4.
[142] Larsen (n 37).
[143] Marko Milanovic (n 16) 4.
[144] Aurel Sari, 'Jaloud v Netherlands: New Directions in Extra-Territorial Military Operations' <http://www.ejiltalk.org/jaloud-v-netherlands-new-directions-in-extra-territorial-military-operations/> accessed 20 June 2016.

to the CoE have no other choice but to ratify the ECHR, and needless is to say that the interest of being part of the CoE is high considering the benefits they can get from it in various areas such as economy, politics and commerce. Freedman underpins that this could have maybe been also a good solution for the UN in order to better ensure that its members respect human rights throughout the world, but argues that that opportunity is now « long gone »[145]. But is that the case? This question will not be addressed in the current paper, but is an interesting question to be mentioned and maybe considered, if, one day, the UN system will be reformed.

The ECHR contains a jurisdiction clause at its first article which can be read as follows: « The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention[146] ». How has the ECtHR's case-law viewed this clause and to what point did it extend it to extraterritorial acts of its contracting parties?

In 1989, the ECtHR noted in the case of ***Soering v The United Kingdom*** that article 1's clause of the ECHR sets a territorial limit to its application, which only governs the actions of its member states:

> *In particular, the engagement undertaken by a Contracting State is confined to "securing" ("reconnaître" in the French text) the listed rights and freedoms to persons within its own "jurisdiction".*[147]

Seven years later, in 1996, the ECtHR was called to decide upon a case lodged by Ms Loizidou, a Cypriot national who claimed to be the owner of land property in the Turkish occupied Northern Area of Cyprus (*Turkish Republic of Northern Cyprus*) – occupied since 1974 –, to which the Turkish authorities have been denying her access ever since[148]. The court had to determine whether Turkey was responsible *inter alia* for the alleged violation. In order to do so, it had to decide if Turkey had jurisdiction over the said

[145] Rosa Freedman (n 14) 152 and 153.
[146] Marko Milanovic (n 16) 4.
[147] *SOERING v THE UNITED KINGDOM* [1989] European Court of Human Rights 14038/88 [86].
[148] *LOIZIDOU v TURKEY* [1996] European Court of Human Rights 15318/89.

territory at the time of the events, in conformity with article 1 of the ECHR. It then stated that the question had to be looked at by taking into consideration the principles of international law[149]. Further, the court underpinned that the concept of *jurisdiction* provided in article 1 of the ECHR finds application beyond its territory and that « the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory[150] ». In this particular case it decided that a state can be responsible for human rights violation committed on another territory as a consequence of military occupation – lawful or not – if it exercises *effective control* over the said territory and as such, its « obligation to secure, in such an area, the rights and freedoms set out in the ECHR, derives from the fact of such control being either exercised directly, through armed forces, or through a subordinate local administration.[151] ».

The court went very far in its reasoning, and it was therefore heavily criticized by the dissident judges, such as Judge Jambrek, who considered this to be mostly a political complex situation and not a simple individual issue, adding that the decision rendered by the majority risked to incite other Cypriot nationals who found themselves in the same situation as Ms Loizidou to file similar complaints to the ECtHR[152].

Another important decision was rendered by the Grand Chamber of the ECtHR in 2011 in ***Bankovic v Belgium and Others***, where the court underpinned in its decision that the term *jurisdiction* mentioned in the article 1 of the ECHR is foremost territorial and, as such, extraterritorial application of the ECHR remains exceptional, each case having to be decided in the light of its own full circumstances:

> *59. As to the "ordinary meaning" of the relevant term in Article 1 of the Convention, the Court is satisfied that, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial (…).*
>
> *(…)*

[149] ibid 49.
[150] ibid 52.
[151] ibid.
[152] *LOIZIDOU v. TURKEY* (n 148).

> *61. The Court is of the view, therefore, that Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case (…)*[153].

In paragraph 60 of this decision, the court recognized two already accepted exceptions to the classic notion of territorial jurisdiction, both consisting in a given state exercising some or all power a sovereign would normally exercise, but on a foreign territory: one being through the means of military occupation[154] and the other through means of « consent, invitation or acquiescence[155] ».

The court, at paragraph 80 of the same decision, underlined the « special character of the Convention as a constitutional instrument of European public order for the protection of individual human beings[156] » and reminded that the role of the ECtHR, as stated in article 19 of the ECHR, is to ensure that its member states respect their obligations set in the latter convention.

In 2011, in the case of ***Al-Skeini v The United Kingdom***, the Grand Chamber of the ECtHR added to those two principles a new one, which was more focused on the state exercising control and power directly on individuals:

> *136. In addition, (…) in certain circumstances, the use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction. This principle has been applied where an individual is taken into the custody of State agents abroad. For example, in Öcalan (…), the Court held that "directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the 'jurisdiction' of that State for the purposes of Article 1 of the Convention, even though in this instance Turkey exercised its authority outside its territory". (…) The Court does not consider that jurisdiction in the above cases arose solely from the control exercised by the Contracting State over the buildings, aircraft or ship in which the individuals were held. What*

[153] *BANKOVIĆ AND OTHERS v BELGIUM AND OTHERS* [2001] European Court of Human Rights 52207/99.
[154] *LOIZIDOU v. TURKEY* (n 148) [62]; *AL-SKEINI AND OTHERS v THE UNITED KINGDOM* [2011] European Court of Human Rights 55721/07 [138].
[155] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [71]; *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [135].
[156] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153).

> *is decisive in such cases is the exercise of physical power and control over the person in question*[157] (citations omitted).

In this decision, the court expanded its criteria for the application of the extraterritoriality principle to cases where, when a state is not necessarily in effective military control of a territory, but it assumes « authority and responsibility for the maintenance of security[158] » on that given territory where it additionally exercises physical control over an individual, in the light of all the circumstances, could be responsible of securing that individual's rights and freedoms « that are relevant to (its) situation[159] », acknowledging that in such cases, « the Convention rights can be "divided and tailored" [160] ».

Three years later, in 2014 in the case of ***Hassan v The United Kingdom***[161], the Grand Chamber of the ECtHR was called to decide on a complaint of an Iraqi national whose brother was taken and detained in Camp Bucca, in Iraq, by the British forces in April 2003[162]. Unlike the situation in ***Al-Skeini v The United Kingdom*** abovementioned, where the court decided that there was a jurisdictional link between the United Kingdom and the victims mainly because the latter was at the time of the events exercising the power of a sovereign government in Iraq[163], in this particular case, where the United Kingdom was not yet exercising such power at the time of the events, the court decided that the simple fact that the United Kingdom was exercising physical control over him was enough to consider that it was also exercising jurisdiction over him and was therefore responsible of securing his rights under article 1 of ECHR:

> *75. In Al-Skeini, (…) the applicants' relatives fell within United Kingdom jurisdiction (…) The present case concerns an earlier period, before the United Kingdom and its coalition partners had declared that the active hostilities phase of the conflict had ended and that they were in occupation, and before the United Kingdom had assumed responsibility for the maintenance of security in the South East of the country (…). However, as in Al-Skeini, the Court does not find it necessary to decide whether the United*

[157] *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154).
[158] ibid 159.
[159] ibid 137.
[160] ibid.
[161] *HASSAN v THE UNITED KINGDOM* [2014] European Court of Human Rights 29750/09.
[162] ibid 3 and 11.
[163] *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [149 and 150].

> *Kingdom was in effective control of the area during the relevant period, because it finds that the United Kingdom exercised jurisdiction over Tarek Hassan on another ground.*
>
> *76. Following his capture by British troops early in the morning of 23 April 2003, until he was admitted to Camp Bucca later that afternoon, Tarek Hassan was within the physical power and control of the United Kingdom soldiers and therefore fell within United Kingdom jurisdiction*[164]

During the same year, the Grand Chamber of the ECtHR had to decide on another case regarding events which took place in Iraq, this time in 2004, in the case of ***Jaloud v The Netherlands***[165]. This time, the court went even further in expanding the extraterritorial application of the ECHR, considering that the Netherlands had jurisdiction over an Iraqi civilian who was simply passing through a vehicle checkpoint and was fired at by Dutch soldiers who were then present on the ground[166]. This is considered to be a totally new principle of application[167] and one can even wonder if after the outcome in ***Bankovic v Belgium and Others –*** where the court considered that the air strikes were not sufficient to attribute jurisdiction to the countries participating in the attack –, in the light of this new case's reasoning, would not be different today, despite the fact that the court made it clear in its judgement that the « cause and effect » principle is still not a criteria which can be considered under the article 1 of ECHR[168]. However, that is not an issue addressed in the current paper, which concentrates on the extraterritoriality principle as applied by the ECtHR and its possible application in the future to cases of sexual abuse and exploitation by personnel related to UN peacekeeping operations, and not on the attribution of conduct as such[169].

The story behind ***Jaloud v The Netherlands*** is that in 2003, the Netherlands sent troops in Iraq following a call of assistance made by the Security Council of the UN in its resolutions 1483 and 1511[170]. During that period, the United Kingdom and the United

[164] *HASSAN v. THE UNITED KINGDOM* (n 161) [75–76].
[165] *JALOUD v THE NETHERLANDS* [2014] European Court of Human Rights 47708/08.
[166] ibid 9–16.
[167] Aurel Sari (n 144).
[168] *JALOUD v. THE NETHERLANDS* (n 165) [154].
[169] For more information regarding the attribution of conduct and its relation the extrateritoriality principle see: Larsen (n 37).
[170] *JALOUD v. THE NETHERLANDS* (n 165) [93–94, 144–145].

States were the countries who were considered as occupying powers in Iraq[171]. Therefore, the Netherlands troops were in Iraq in order to offer their assistance for the latter two and were then acting under the operational command of the United Kingdom:

> *53. From July 2003 until March 2005 Netherlands troops participated in the Stabilization Force in Iraq (SFIR) in battalion strength. They were stationed in the province of Al-Muthanna as part of Multinational Division South-East (MND-SE), which was under the command of an officer of the armed forces of the United Kingdom.[172].*

In this file, the Netherlands argued that, since other states were the occupying countries in Iraq at the moment of the events, it did not have jurisdiction over its contingent at the times of the incident. The ECtHR agreed that the Dutch soldiers then acted under the *operational command* of the United Kingdom, but sustained that this was not in itself sufficient to relieve the Netherlands of its obligations under the ECHR[173] and concluded that since the latter still had *full commandment* of its troops in Iraq, the victims were, at the time of the events, under its jurisdiction in accordance with article 1 of ECHR:

> *147. It appears from the Memorandum of Understanding for MND (C‑S), as well as the excerpt of the Memorandum of Understanding for MND-SE to which the Government have afforded the Court access (…), that while the forces of nations other than the "lead nations" took their day-to-day orders from foreign commanders, the formulation of essential policy – including, within the limits agreed in the form of Rules of Engagement appended to the Memoranda of Understanding, the drawing up of distinct rules on the use of force – remained the reserved domain of individual sending States.*
>
> *(...)*
>
> *149. Although Netherlands troops were stationed in an area in south-eastern Iraq where SFIR forces were under the command of an officer from the United Kingdom, the Netherlands assumed responsibility for providing security in that area, to the exclusion of other participating States, and retained full command over its contingent there[174].*

The court further noted that the notion of occupying power is not in itself determinant in such cases[175].

---

[171] ibid 93.
[172] *JALOUD v. THE NETHERLANDS* (n 165).
[173] ibid 143.
[174] *JALOUD v. THE NETHERLANDS* (n 165).
[175] ibid 142.

Jaloud v The Netherlands therefore makes it clear that national contingents' activities can still be considered to fall within the ambit of article 1 of ECHR, even in cases where they act as part of an international force for the scope of fulfilling an international mandate.[176]

The careful reading of the abovementioned cases leaves the lecturer wondering how far the court is willing to go next. The ECtHR develops more and more principles regarding the extraterritorial application of the ECHR, however leaving the exact criteria uncertain, which might make it difficult for national courts to properly apply them to new upcoming cases.

2.3 The interesting case of Netherlands

We find it rather interesting to also note, in the present paper, the landmark decisions rendered by the national courts of the Netherlands in the past years, notably by the Dutch Supreme Court in the case of Hassan Nuhanović in 2013[177] and by the District Court in Mothers of Srebrenica in 2014[178], in which the courts had to decide if the state of Netherlands was to be attributed responsibility for wrongful actions committed by its Dutchbat troops who were sent as part of peacekeeping missions for the UN in Bosnia and Herzegovina in the 1990s.

In 1995, when the genocide of Srebrenica took place, Nuhanović was working as an interpreter for the UN in Potocari, where the UNPROFOR Dutch battalion (Dutchbat) was stationed at the time, amounting to about 300 peacekeepers, and whose task was to protect what the UN designated in its Resolution 819 of 16 April 1993 as a « safe

[176] Aurel Sari (n 144).
[177] *Netherlands (Ministry of Defence and Ministry of Foreign Affairs) v Nuhanović, Final appeal judgment, ECLI/NL/HR/2013/BZ9225, ILDC 2061 (NL 2013), 12/03324, 6th September 2013, Supreme Court [HR]*.
[178] *Mothers of Srebrenica et al v State of the Netherlands and the UN* [2014] The Hague District Court 295247 / HA ZA 07-2973.

area[179] ». Nuhanović's name was inscribed on the list of UN personnel who could, along with the Dutchbat and if necessary, be evacuated from the area. Once the enclave fell in Srebrenica, in July 1995, the applicant's close family – parents and brother – joined him in the UN compound in order to remain safe. However, since their names were not on the list alongside with that of Nuhanović, they were soon after required to leave the compound. This resulted in them losing their lives among other 8000 Muslims who were seeking refuge in that « safe area » at the time. As a consequence, the applicant sued the state of Netherlands in front of the Dutch national courts and asked for them to issue a declaratory ruling which would hold the Netherlands liable for the death of his family and pay him damages[180]. The state argued that since the Dutchbat was then under the command of the UN, only the later could be held responsible for the wrongful acts of the peacekeeping troops[181].

In 2014, the Supreme Court of the Netherlands decided in the case of Nuhanović that the state can indeed be held responsible for wrongful acts committed by the Dutchbat during its peacekeeping mission in Bosnia and Herzegovina. The highest court of the country then decided that the question of attribution as well as the relevant conditions to be considered in resolving such an issue requires for the court to take into account the relevant rules of international law[182]. In this particular case, the Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001 and the Draft Articles on the Responsibility of International Organizations of 2011 (hereafter « DARIO ») drawn by the International Law Commission (ILC) of the UN were given particular importance and consider to give relatively clear indications as to which are the conditions in which a state could be held responsible for such acts[183]. As such, the court looked at the Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001,

[179] *Netherlands (Ministry of Defence and Ministry of Foreign Affairs) v Nuhanović, Final appeal judgment, ECLI/NL/HR/2013/BZ9225, ILDC 2061 (NL 2013), 12/03324, 6th September 2013, Supreme Court [HR]* (n 177) [3.1].
[180] ibid 3.2.
[181] ibid 3.4.
[182] ibid 3.6.2.
[183] ibid 3.7.

in its first part, chapter II, art. 4 and 8[184] and concluded that the wrongful conduct can therefore be attributed to a state « if Dutchbat can be considered as an organ of the State (…) or if in fact acted on the instructions or under the direction or control of the State[185] ».

Furthermore, according to art. 48 DARIO and to article 6-9 DARIO and its commentary by the ILC – which enshrine the principle of dual attribution – an international organization and a state can both be hold responsible for the same wrongful act, and one doesn't necessarily excludes the other[186]. The criterion determined by the court as being the decisive one is that of *effective control*, which is foreseen at art. 7 DARIO, and which, according to its ILC's commentary, is the one which should apply when it comes to dealing with cases related to peacekeeping operations:

> *Article 7 deals with the (...) situation in which the seconded organ or agent still acts to a certain extent as organ of the seconding State or as organ or agent of the seconding organization. This occurs for instance in the case of military contingents that a State places at the disposal of the United Nations for a peacekeeping operation, since the State retains disciplinary powers and criminal jurisdiction over the members of the national contingent.*[187]

Also regarding art. 7 DARIO, the attribution of conduct has to be determined by looking at « the factual control that is exercised over the specific conduct taken by the organ or agent placed at the receiving organization's disposal[188] », this being done by studying the particular circumstances of the case[189].

Being that the Dutchbat troops in this case fully responded to this criteria, the Supreme Court of the Netherlands asserted that the State of Netherlands was indeed responsible for what it also considered in this decision to have been wrongful acts committed by the Dutchbat during the genocide in Srebrenica regarding the applicant's complaint[190]. The

[184] ibid 3.8.1.
[185] ibid 3.8.2.
[186] ibid 3.9.2 and 3.9.4.
[187] ibid 3.9.3.
[188] ibid 3.9.5.
[189] Larsen (n 37).
[190] *Netherlands (Ministry of Defence and Ministry of Foreign Affairs) v Nuhanović, Final appeal judgment, ECLI/NL/HR/2013/BZ9225, ILDC 2061 (NL 2013), 12/03324, 6th September 2013, Supreme Court [HR]* (n 177) [3.13]. Note: the decision which brought the court to consider the exclusion of

case « marks the first time an individual government has been held to account for the conduct of its peacekeeping troops operating under a UN mandate[191] ».

In 2014, the District Court of Netherlands rendered a similar decision in the case brought in front of it by the group known under the name Mothers of Srebrenica[192], where it ruled that the Netherlands was liable for the death of 300 Muslims who were killed during the Srebrenica genocide – among the 8000 who died –, were under the *effective control* of the Dutchbat[193]. Its reasoning was mainly based on the Supreme Court of Netherland's decision in Nuhanović aforementioned case[194]. However, this decision was slightly different from the latter case, the court also considering the notions of *command and control* of the troops. The Court said in this case that the command and control of the troops has been transferred, under Chapter VII of the UN Charter, to the UN[195], and invoked the notion of *ultra vires* acts, which, according to this ruling, would imply then that the state is to be held responsible for wrongful acts, since it is the one who's responsible for its troop's training and disciplinary matters[196].

These cases concerned mainly what is known in international law as the principle of dual attribution of conduct, which is different from the extraterritoriality principle, both being however connected, especially when it comes to human rights violations and accountability[197]. In these national case-law, the Netherlands recognized the principle of dual attribution in the case of peacekeeping missions for the first time[198].

Nuhanović's family of the compound will not be treated in this report, since it is not relevant to the current study.

[191] Asser Institute, 'The State of the Netherlands v. Hasan Nuhanović' (*International Crimes Database*, 2013) <http://www.internationalcrimesdatabase.org/Case/1005/The-Netherlands-v-Nuhanovi%C4%87/> accessed 18 June 2016.

[192] *ECLI* (n 178).

[193] ibid 4.87 and 4.88.

[194] ibid 4.33, 4.34.

[195] ibid 4.37.

[196] ibid 4.57 and 4.58.

[197] Larsen (n 37).

[198] These decisions are criticized in litterature. For more information see for egg.: André Nollkaemper, 'André Nollkaemper; "Dual Attribution: Liability of the Netherlands for Conduct of Dutchbat in Srebrenica" - Articles - Nuhanovic Foundation' [2011] Amsterdam Law School Research Paper No. 2011-29 <http://www.nuhanovicfoundation.org/en/articles/andre-nollkaemper-dual-attribution-liability-of-the-netherlands-for-conduct-of-dutchbat-in-srebrenica/> accessed 13 July 2016.

2.4 Conclusion

The quite recent case-law of the ECtHR in the area of extraterritorial application of its convention developed in a considerable way in the past few years, the exceptions to the territorial jurisdiction of its member states accepted up until now being the following: acts of diplomatic and consular agents[199], effective control of a territory as a result of a military occupation, lawful or not[200], sovereign type of acts performed by a state on a foreign territory upon invitation, consent or acquiescence[201] or officials of a state simply exercising physical control over an individual who finds himself on a foreign territory, the latter not requiring a military occupation of the said territory[202] and being accepted even in cases where the state is acting as a part of an international organization for the purpose of fulfilling an international mandate[203].

The case-law of Netherlands is one of a kind up until now, and it is interesting to note that even if through different means and different reasoning that those used by the ECtHR in its case-law, the Netherlands courts gave a particular importance to the criteria of *effective control* in deciding if the UN peacekeepers committed a wrongful act which could then be attributed to their sending state. The courts of Netherlands did not mention ECtHR's previous cases on attribution of conduct[204] and decided that this principle applies to peacekeeping operations, according to particular circumstances of those cases, underlining the fact that the State can also be held responsible for acts of its nationals, even when they act under the mandate of the UN[205].

[199] *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [134].
[200] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [70]; *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [138].
[201] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [71]; *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [135].
[202] *HASSAN v. THE UNITED KINGDOM* (n 161) [137].
[203] Aurel Sari (n 144); *JALOUD v. THE NETHERLANDS* (n 165).
[204] The most important cases of the ECtHR where a decision was rendered as regards to the principal of attribution of conduct previously to the Dutch national cases are: *BEHRAMI and BEHRAMI v FRANCE (admissibility)* [2007] European Court of Human Rights 71412/01 and; *SARAMATI v FRANCE, GERMANY and NORWAY (admissibility)* [2007] European Court of Human Rights 78166/01; For more information see: André Nollkaemper (n 198).
[205] Asser Institute (n 191); *ECLI* (n 178).

Despite the ECtHR having closed the door to this principle of double attribution of conduct in the past[206], Sari argues that in 2014, in the case of **Jaloud v The Netherlands**, the court opened the door towards accepting it when it comes to national troops acting under the mandate of an international organization, distancing itself from its previous case-law in the matter. However, this last case was unique in its genre, and it remains to see if the court will continue following the same reasoning while deciding on similar future cases.

That being said, and for the purpose of the current study, could the victims of human trafficking, sexual abuse and exploitation by personnel related to UN peacekeeping operations belonging to member states of the CoE fall under the latter's jurisdiction in accordance with article 1 of the ECHR?

[206] *BEHRAMI and BEHRAMI v. FRANCE (admissibility)* (n 204); *SARAMATI v. FRANCE, GERMANY and NORWAY (admissibility)* (n 204).

3. Case study: sexual abuse and exploitation by personnel related to UN peacekeeping operations

As previously mentioned, this paper aims to take a look at one case of sexual abuse and exploitation committed by personnel related to UN peacekeeping operations in general, the members of personnel involved being from a country which is itself member of the CoE. The main goal of this chapter is to study the possibility of applying the principles of extraterritoriality recently developed by the ECtHR and further detailed in the previous chapter, to a chosen case, in order to verify the hypothesis in which the said TCC could be held by the ECtHR as having violated the ECHR for failing to investigate such cases of abuse and/or prosecute those facing the allegations, given that such case would one day be submitted to the court.

3.1 The European Convention on Human Rights: relevant provisions

In order to be able to answer the previous questions, it is important to first take a look at the ECHR's provisions which would find application in cases of human trafficking and sexual abuse and exploitation under the convention.

The ECHR was adopted in 1950 by the CoE and later entered into force in 1953 with the first 10 ratifications, having today 47 countries as members[207]. It is known as having given binding effect to some freedoms and rights initially included in the UN's Universal Declaration of Human Rights of 1948[208]. The purpose of the ECHR is mentioned in its preamble as being the « the achievement of greater unity between its members[209] » through the « maintenance and further realisation of Human Rights and Fundamental

[207] Council of Europe, 'European Convention on Human Rights - Official Texts, Convention and Protocols' (*European Court of Human Rights*) <http://www.echr.coe.int/pages/home.aspx?p=basictexts> accessed 27 June 2016.
[208] ibid.
[209] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 1950 [ETS 5]; Aisha Gani, 'What Is the European Convention on Human Rights?' *The Guardian* (3 October 2014) <http://www.theguardian.com/law/2014/oct/03/what-is-european-convention-on-human-rights-echr> accessed 27 June 2016; Council of Europe, 'Chart of Signatures and Ratifications of Treaty 005 - Convention for the Protection of Human Rights and Fundamental Freedoms' (*Treaty Office*) <https://www.coe.int/web/conventions/full-list> accessed 27 June 2016.

Freedoms[210] ». As such, the convention states the belief of its founding fathers that one of the essential pillars which can contribute to attain unity between nations is the protection of human rights and essential freedoms.

What is interesting in the light of the current study is the article 2 of the Universal Declaration of Human Rights which states that:

> *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty*[211].

Therefore, according to this provision, no distinction among people, when it comes to their human rights and freedoms, should be made on the ground of jurisdiction. However, as seen in subsection 2.2 of the previous chapter, the ECHR chose to leave this question in the hands of the ECtHR.

Consequently, in cases such as human trafficking and sexual abuse and exploitation committed by personnel related to UN peacekeeping operations during field missions, one of the crucial provisions remains the article 1 of the ECHR, which was the core of the study in the second chapter of this paper, and which concerns the jurisdiction issue. Therefore, if one day the ECtHR will be called to decide upon such a case, this will be one of the main question it will have to address and reflect upon.

That being said, the ECHR also contains a provision at its article 13 regarding the « right to an effective remedy[212] » of all those to whom the rights and freedoms to which they are entitled to under the convention have previously been violated. In order to benefit from the protection of this article, the violation has to have been committed by people

[210] Council of Europe ECHR (n 209); Gani (n 209); Council of Europe (n 209).
[211] UNGA, The Universal Declaration of Human Rights 1948 [217 A (III)].
[212] Council of Europe ECHR (n 209).

who then act in their official capacity, and the effective remedy *per se* has to be ensured to individuals by their national authorities.

As regards to the admissibility of cases concerning ECHR violations to the ECtHR, individuals themselves or in groups, as well as nongovernmental organizations are entitled to file a complaint to the court according to article 34. Nevertheless, for such complaints to be considered by the court, it is required by the same provision from the complainants to have exhausted their national remedies beforehand. Additionally, their file has to be submitted to the court within maximum six months after the final national court decision, as provided by article 35 of the ECHR[213].

Saving those general provisions, which would then be the specific ones a victim of human trafficking, sexual abuse and exploitation could invoke in front of the ECtHR in general?

According to the ECtHR and its case-law, a victim of sexual abuse could file a complaint against a given state for violation of article 3 of the ECHR and invoke having been subject to ill treatment and even treatment that could amount to torture (depending on the facts of each case)[214]. The ECtHR considered this provision as having been violated in cases of sexual abuse when states didn't fulfill their corresponding positive obligations, such as ensuring the preventive protection of victims, and even sometimes filling the relevant gaps in their national laws[215], or in cases where they violated other procedural aspect of this provision, by either failing to duly investigate the allegations, prosecute the perpetrators, or by allowing unreasonable delays in the preliminary procedures or the court proceedings themselves[216]. The ECtHR noted in a decision rendered in 2004, where the applicant complained about having been raped by two civilians and about the

[213] ibid Article 35 of the ECHR provides for more details regarding the admissibility of a complaint. However, this study will not address this issue in detail.
[214] European Court of Human Rights, 'Factsheet – Violence against Women' <http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf> accessed 27 June 2016.
[215] *X AND Y v THE NETHERLANDS* [1985] European Court of Human Rights (Chamber) 8978/80 [27].
[216] See for example: *IG v MOLDOVA* [2012] European Court of Human Rights 53519/07 [42–45]; *MC v BULGARIA* [2004] European Court of Human Rights 39272/98 [149–151]; *BS v SPAIN* [2012] European Court of Human Rights 47159/08 [48]; *IP v THE REPUBLIC OF MOLDOVA* [2015] European Court of Human Rights 33708/12 [31–36].

ineffective investigation ran afterwards by the police, that the « positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by state agents[217] ».

Article 3 of the ECHR is considered to be a *jus cogens* norm which represents one of the core provisions of the convention[218] and can therefore never be derogated from. According to some, this could also mean that the ECtHR recognizes as well a minimum « decency threshold[219] ». The provision generally aims to offer protection to individual's physical integrity and dignity[220] and the ECHR, in its case-law, stated that article 3 contains two different violations: inhumane or degrading treatment and torture, the distinction having been made « in order to attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering[221] ».

Throughout the years, the ECtHR seems to have adopted as definition of torture part of the one found in the UN Convention Against Torture entered into force in 1987, and more specifically the following elements: intentional infliction of physical or mental sever pain or suffering for a purpose such as obtaining information or confessions or for discriminatory reasons[222]. As for ill-treatment, since 1978, the ECtHR stated that it « must attain a minimum level of severity if it is to fall within the scope of Article 3[223] », its assessment being relative and depending on all the circumstances of each case, « such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc[224] ». Therefore, the intensity of the treatment and suffering infringed is very important for the court in deciding which of the two rights of

[217] *M.C. v. BULGARIA* (n 216) [151].
[218] Aisling Reidy, 'The Prohibition of Torture: A Guide to the Implementation of Article 3 of the European Convention on Human Rights' [2003] Council of Europe 19 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff4c> accessed 13 July 2016.
[219] Ida Elisabeth Koch, *Human Rights As Indivisible Rights: The Protection of Socio-Economic Demands Under the European Convention on Human Rights* (Martinus Nijhoff Publishers 2009) 94 <http://works.bepress.com/idaelisabeth_koch/9/> accessed 29 June 2016.
[220] Aisling Reidy (n 218) 19.
[221] *DIKME v TURKEY* [2000] European Court of Human Rights 20869/92 [93]; *AKKOC v TURKEY* [2000] European Court of Human Rights nos. 22947/93 and 22948/93 115.
[222] *AKKOC v. TURKEY* (n 221) 115; *SALMAN v TURKEY* [2000] European Court of Human Rights 21986/93 [114].
[223] *IRELAND v THE UNITED KINGDOM* (European Court of Human Rights) [162].
[224] ibid.

article 3 of the ECHR was indeed violated[225], and so is the intention with whom the harm is inflicted upon the victim, the torture always having a particular purpose[226].

As regards to the application of article 3 of the ECHR to cases of women sexually abused by security forces during police detention, the ECtHR has made some important statements which are relevant to mention for the purpose of the current study. As such, in a decision rendered in 1997 in the case of ***Aydın v. Turkey***, in which a 17 years old Kurdish girl was raped and beaten for several hours by members of security forces in Turkey, while in their custody and following her arrest by the latter, the ECtHR stated that « rape of a detainee by an official of the State (is) an especially grave and abhorrent form of ill-treatment[227] ». It was considered so « given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim[228] ». This characteristics, taken together with the psychological important scars that this experience can leave on the person amounted, in the eyes of the court, to torture in light of article 3 of the ECHR[229]. These principles were reiterated by the court in 2008 in a case where the applicant was repeatedly raped and beaten by the Russian police in an attempt to force her to confess of having committed a murder[230].

As for cases of human trafficking, article 4 of the ECHR, which prohibits slavery and forced labor, has been invoked in numerous disputes submitted to the ECHR[231]. This provision, just as article 3 of the same convention, contains a positive obligation of the state to protect the victims and prevent these types of crimes from happening, but also to effectively conduct investigations in such cases and where necessary, give rise to effective

[225] Aisling Reidy (n 218) 12.
[226] ibid 16; UNVFVT, 'Interpretation of Torture in the Light of Practice and Jurisprudence of International Bodies' 8 <http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf> accessed 13 July 2016.
[227] *AYDIN v TURKEY* [1997] European Court of Human Rights 23178/94.
[228] Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights* (OUP Oxford 2012) 165.
[229] European Court of Human Rights (n 214) 4–5.
[230] *MASLOVA and NALBANDOV v RUSSIA* [2008] European Court of Human Rights 839/02.
[231] European Court of Human Rights (n 214); European Court of Human Rights, 'Factsheet – Trafficking in Human Beings' <http://www.echr.coe.int/Documents/FS_Trafficking_ENG.pdf> accessed 27 June 2016.

prosecutions[232]. Unreasonable delays can also amount to a procedural violation of this article, and sometimes, even a violation of article 6 of the convention, which concerns the right to a fair trial of the victim[233].

In conclusion, the ECtHR did apply the ECHR to cases of sexual abuse and human trafficking mainly under the umbrella of its articles 3 and 4 which offer protection to individuals against ill-treatment and torture, slavery and forced labour. The court made it clear that both of these provisions create positive obligations for the member states, which can result in creating the obligation for them of taking the necessary measures in order to prevent these crimes from happening by adopting effective laws, but also by efficiently investigate and instituting appropriate proceedings to punish such crimes. Likewise, the ECtHR did consider, in light of all circumstances of such cases, that rape can fall under the protection of article 3 of ECHR and consist in ill-treatment or even torture, the threshold being more easily attained in cases where the victim was aggressed by state officials, circumstances which were considered to render the victim even more vulnerable. The psychological consequences were also often taken into account in the court's reasoning.

Another interesting procedural obligation developed by the ECtHR in its case-law that could be of relevance here, is that regarding some articles of the ECHR, among which article 3[234], the member states can be found as having violated the convention in cases where their national legal frameworks are defective or contain important gaps[235]. This was for example the case in 2004, when the court affirmed a Bulgarian legislation to be defective and therefore not comply with the procedural requests of article 3, in a case of

[232] See: *RANTSEV v CYPRUS and RUSSIA* [2010] European Court of Human Rights 25965/04; Roza Pati, 'States' Positive Obligations with Respect to Human Trafficking: The European Court of Human Rights Breaks New Ground in Rantsev v. Cyprus & Russia' (Social Science Research Network 2011) SSRN Scholarly Paper ID 2014460 <http://papers.ssrn.com/abstract=2014460> accessed 13 July 2016; Ryszard Piotrowicz, 'States' Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations' (2012) 24 International Journal of Refugee Law 181.
[233] *LE v Greece* [2016] European Court of Human Rights 71545/12.
[234] *M.C. v. BULGARIA* (n 216).
[235] *X AND Y v. THE NETHERLANDS* (n 215) [28]; *L.E. v. Greece* (n 233); Aisling Reidy (n 218) 39.

sexual abuse stating that: « defective legislation and reflected a practice of prosecuting rape perpetrators only where there was evidence of significant physical resistance »[236].

It is interesting to observe that the ECtHR only decided on such cases where the victim was sexually abused, exploited or trafficked on the physical national territory of the respondent states[237]. However, one can see no obstacle to why this case-law could not also be applied to situations where personnel related to UN peacekeeping operations who commits sexual abuses and exploitation or engage in human trafficking during field missions, as long as they would then be considered to then fall under the TCCs' jurisdiction in accordance with its article 1.

3.2 Central African Republic case

The most recent case of allegations of sexual abuse and exploitation by the UN personnel related to UN peacekeeping operations is the one in Central African Republic, which came to light in 2015[238]. This is one of the reasons for which this particular case was chosen in order to be subjected to the current analysis. Further, it is also crucial to underpin that it is very difficult to encounter a specific case which could be studied in detail for the purpose of the present research paper, since first of all, cases which are known about are only so because they have gained international media attention, and second, because for most of them, the details are very rarely rendered public. This can also be underlined for example by the fact that even the French government, while trying to investigate their own troops' involvement in such crimes was faced with a non-cooperative attitude from the UN[239]. Added to that, and as previously stated, the current study deals with personnel related to UN peacekeeping operations originating from countries members to the CoE, which is the case in CAR, where the French Sangaris

[236] *M.C. v. BULGARIA* (n 216).
[237] European Court of Human Rights (n 214).
[238] Sandra Laville, 'UN Aid Worker Suspended for Leaking Report on Child Abuse by French Troops' *The Guardian* (29 April 2015) <https://www.theguardian.com/world/2015/apr/29/un-aid-worker-suspended-leaking-report-child-abuse-french-troops-car> accessed 4 July 2016.
[239] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) vi.

Forces were, among other peacekeeping troops, subject of allegations of sexual abuse and exploitation against locals, especially children.

CAR is considered to be one of the poorest countries in the world, despite being rich in natural resources[240], having a population of almost 5 million inhabitants and a life expectancy of 51 years old on average. The country won its independence from the colonial rule of France – during which it is believed that some ethnic groups were favorited – in 1960[241], and was under military rule and political instability ever since, multiple *coups d'états* having succeeded one another[242].

In December 2009, when François Bozizé was still the president of CAR, and while violent confrontations were taking place in the country between the government and rebel groups, the UN Security Council adopted the statement of the President of the Security Council from April of the same year, in which it called for a cease of violence by all armed groups in the northern part of the country and welcomed the recommendation of the UN Secretary-General to establish a UN Integrated Peacebuilding Office in the CAR (hereafter « BINUCA »), mandated to assist the country by offering support in reforming governance and electoral process, in the process of disarmament of rebel groups, promotion of the rule of law, respect of human rights, justice, accountability as well as ensuring child protection[243].

[240] 'Central African Republic Country Profile' (*BBC News*, 31 March 2016) <http://www.bbc.com/news/world-africa-13150040> accessed 3 July 2016.
[241] Jan S. van Hoogstraten, 'Central African Republic' (*Encyclopaedia Britannica*, 19 April 2016) <https://global.britannica.com/place/Central-African-Republic> accessed 3 July 2016.
[242] 'Central African Republic Profile - Timeline' (*BBC News*, 10 February 2016) <http://www.bbc.com/news/world-africa-13150044> accessed 3 July 2016.
[243] UNSC, 'Statement by the President of the Security Council' (7 April 2009) [S/PRST/2009/5] <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20SPRST20095.pdf> accessed 4 July 2016; 'Central African Republic Chronology of Events : Security Council Report' <http://www.securitycouncilreport.org/chronology/central-african-republic.php?page=all&print=true> accessed 4 July 2016.

The country's situation however worsened in March 2013, when President François Bozizé, who was himself at the head of the country for a decade and also as a result of a *coup d'état*, was ousted by a new coalition of rebel groups of Muslims, going by the name of Séléka, who at the time took over CAR's capital, Bangui[244]. This led to the development of a counter rebel group made in majority of Christians and known as *anti-balaka*[245]. It was then when the African Union's Peace and Security Council considered the situation worrying enough to suspend the country from participating in its activities[246], and in April of the same year, the head of the BINUCA reported that the human rights situation, as well as the political and security ones were distressful[247].

In August of the same year, Michel Djotodia, rebel leader of Séléka, took the place of François Bozizé as president of CAR, suspended the country's constitution and dissolved its parliament. As a result of these events, the UN Security Council expressed its concern about this situation, which it then considered to be a threat to the security in the region, and the UN Secretary General, Ban Ki-moon, declared the country as being in « total breakdown of law and order » [248]. In September, the new president dissolved Séléka, for which he was criticized not to be able to control[249]. However, its ex-members continued to commit grave human rights violations throughout the country[250].

In December 2013, considering that the situation in CAR was continuing to represent a threat to international security, the UN Security Council, whilst « (u)nderlying its particular concern at the new dynamic of violence and retaliation and the risk of it degenerating into a countrywide religious and ethnic divide, with the potential to spiral into an uncontrollable situation, including serious crimes under international law in particular war crimes and crimes against humanity, with serious regional

[244] 'Central African Republic Profile - Timeline' (n 242); 'Central African Republic Country Profile' (n 240).
[245] 'Central African Republic Country Profile' (n 240).
[246] 'Central African Republic Chronology of Events : Security Council Report' (n 243).
[247] ibid.
[248] Annyssa Bellal (ed), *The War Report: Armed Conflict in 2014* (Oxford University Press 2015) 135.
[249] 'Central African Republic Profile - Timeline' (n 242).
[250] Bellal (n 248) 136.

implications[251] », authorised, through its resolution 2127, the deployment of African-led International Support Mission in the CAR (hereafter « MISCA »), whilst also authorizing the French forces to offer it its support, at CAR's own request[252], by taking « all necessary measures[253] ». MISCA's mandate was protecting civilians, supporting reforms in the security sector and creating conditions for humanitarian assistance[254].

In January of the next year, 2014, Under-Secretary-General for Political Affairs, Jeffrey Feltman, reported on the appalling general political and human rights violations related situation in CAR calling for action, while also stating that Sangaris French forces, alongside with components of MISCA would have favored one religious community over the other[255].

In April 2014, the UN Security Council established the UN Multidimensional Integrated Stabilization Mission in the CAR (hereafter « MINUSCA ») through its resolution 2149[256], which also authorized, once again, the « French forces, within the limits of their capacities and areas of deployment, from the commencement of the activities of the MINUSCA until the end of MINUSCA's mandate (…) to use all necessary means to provide operational supports to elements of MINUSCA[257] ». This resolution, creating MINUSCA, replaced the MISCA, while asking to the UN Secretary-General to incorporate to it BINUCA[258]. Moreover, at paragraph 38 of this resolution, the UN Security Council requested to the UN Secretary-General «to take the necessary measures to ensure full compliance of MINUSCA with the United Nations zero tolerance policy on sexual exploitation and abuses and keep the Council informed if cases of misconduct occur[259] ».

[251] 'UNSC Res 2127 (5 December 2013) UN Doc S/RES/2127' 1 <http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2127(2013)> accessed 30 June 2016.
[252] ibid 3.
[253] 'UNSC Res 2127 (5 December 2013) UN Doc S/RES/2127' (n 251).
[254] ibid 28.
[255] 'Central African Republic Chronology of Events : Security Council Report' (n 243).
[256] 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' (n 15) 18.
[257] ibid 47.
[258] ibid 18–21.
[259] 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' (n 15).

To sum up the situation, the CAR suffered from political instability in the past 50 decades, since its independence, and was plunged into turmoil in 2013, when its political, as well as security and human rights violations related situations were becoming and threat to international peace and security. In order to stabilize this situation, the UN deployed a peacekeeping mission, the MINUSCA, and mandated, under its Security Council, the French Sangaris Forces to offer their assistance to the mission.

Not long after, in the spring of 2014, allegations that sexual abuse of children taking place in CAR surfaced[260], some soldiers having allegedly paid as low as 50 cents in exchange of various sexual acts[261]. The alleged perpetrators being part of the international peacekeeping operation in the country, originating from countries such as Gabon, Morocco, Burundi, Chad, Equatorial Guinea[262] and France[263]. The French Sangaris Forces being in CAR, as previously mentioned, not under UN command, but under UN Security Council's mandate[264].

This case has caused a lot of debate on the international stage, and in 2015, the UN Secretary-General Ban Ki-moon, following the stir or numerous sexual abuse and exploitation in the CAR by UN peacekeepers and non-UN forces, decided to fire the head of the peacekeeping mission, Babacar Gaye[265]. However, just like many other sexual abuses on women and children done by UN peacekeeping personnel on field, these ones in CAR also came to light due to a scandal involving a whistleblower, Anders Kompass[266]. The first journal to publish information about it having been The Guardian,

[260] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) i.
[261] Kevin Sieff, 'U.N. Says Some of Its Peacekeepers Were Paying 13-Year-Olds for Sex' (*Washington Post*, 11 January 2016) <https://www.washingtonpost.com/world/africa/un-says-some-of-its-peacekeepers-were-paying-13-year-olds-for-sex/2016/01/11/504e48a8-b493-11e5-8abc-d09392edc612_story.html> accessed 6 July 2016.
[262] ibid.
[263] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) i.
[264] 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' (n 15).
[265] Josh Halliday, 'UN Peacekeeping Chief in CAR Sacked over Sex Abuse Claims' *The Guardian* (12 August 2015) <https://www.theguardian.com/world/2015/aug/12/un-peacekeeping-chief-central-african-republic-resigns-babacar-gaye> accessed 6 July 2016.
[266] Sandra Laville, 'UN Whistleblower Who Exposed Sexual Abuse by Peacekeepers Is Exonerated' *The Guardian* (18 January 2016) <https://www.theguardian.com/world/2016/jan/18/un-whistleblower-who-exposed-sexual-abuse-by-peacekeepers-is-exonerated> accessed 6 July 2016.

who, after received a leaked report from the advocacy-group AIDS-Free World on the topic, disclosed it an article dated 29 March 2015[267].

In July 2014, while Kompass was working at the OHCHR, in Geneva, as Director of Field Operations and Technical Cooperation Division, he was provided by the Chief of Rapid Response Unit and Peace Missions Section of the OHCHR with a report containing such allegations against the French Sangaris troops, which he brought, very soon after, to the attention of the Deputy Ambassador of France. He also spontaneously informed the higher levels of the UN about him informing the Deputy Ambassador regarding these complaints[268]. In March 2015, Prince Zeid Ra'ad Al Hussein, the High Commissioner for Human Rights, at the request of Herve Ladsous, head of UN Peacekeeping, and without due investigation in the accusations brought against Kompass, asked him to resign from his position[269]. Following Kompass' refusal to do so, UN's officials' decided to finally put him under official investigation by the OIOS for misconduct, and more precisely for having leaking « confidential un-redacted preliminary investigative notes[270] » regarding these allegations and place him on administrative leave with full pay[271]. After nine months of investigation, on 8 January 2016, Mr Kompass has been completely exonerated[272].

A report of panel on external independent review released in December 2015 – created in June of the same year at the demand of the UN Secretary-General, Ban Ki-moon[273] – also stated that, according to all facts, Kompass did not commit any misconduct in informing the Deputy Ambassador of France about the allegations brought by locals against Sangari

[267] Laville (n 238).
[268] *KOMPASS v SECRETARY-GENERAL OF THE UNITED NATIONS* [2015] UNITED NATIONS DISPUTE TRIBUNAL UNDT/GVA/2015/126 [3–7].
[269] AIDS-Free World, 'The UN's Dirty Secret: The Untold Story of Anders Kompass and Peacekeeper Sex Abuse in the Central African Republic' (*Code Blue*, 29 May 2015) <http://www.codebluecampaign.com/carstatement/> accessed 6 July 2016.
[270] *KOMPASS v. SECRETARY-GENERAL OF THE UNITED NATIONS* (n 268) [8–12].
[271] ibid.
[272] Laville (n 266).
[273] UN Secretary-General Ban Ki-moon, 'Statement Attributable to the Spokesman for the Secretary-General on the Appointment of a Panel on the External Independent Review of the United Nations Response to Allegations of Sexual Exploitation and Abuse and Other Serious Crimes by Members of Foreign Military Forces Not under United Nations Command in the Central African Republic' (*United Nations*, 22 June 2015) <http://www.un.org/sg/statements/index.asp?nid=8746> accessed 5 July 2016.

troops[274]. The report further strongly criticized the UN agencies and their way to handle this matter, stating that the head of the UN mission « failed to take action to follow up » on these allegations or even to report it to higher levels, let alone to ensure the victims' protection and medical assistance[275].

Six young boys interviewed in the summer of 2014 by a MINUSCA Human Rights Officer and UNICEF staff alleged having been themselves sexually abused by MINUSCA peacekeepers and Sangaris Forces personnel, or having witnessed other children being subjected to such abuse, in exchange of which they all received very low amounts of money or food. These particular events took place near an internally displaced person camp in the capital of CAR and the children were, in some cases, able to report names of soldiers involved or describe their personal characteristics, such as tattoos. The report notes that these were not isolated incidents and sometimes it would even happen than children knew which French Sangaris soldiers could be approached in order to obtain food in exchange of sexual acts. Other cases even revealed that Sangaris soldiers were sometimes coordinating between themselves, in order for the children to be able to enter their compound, where civilians were usually forbidden entrance[276].

These allegations of « egregious human rights violations[277] » started to gain UN's interest only when the topic gained international attention from the media[278]. It was revealed that the organization's internal reports were only addressing this issue alongside with other human rights violations which were taking place in the country at the time, and were not focusing on this particular problem. Its partners, such as UNICEF and other NGOs also failed in this situation, since they were simply referring the cases from one to another, none of them really having took the initiative to address the issue directly. All these facts

[274] 'The U.N. Official Who Blew the Lid off Central African Republic Sex Scandal Vindicated' <https://foreignpolicy.com/2015/12/17/the-u-n-official-who-blew-the-lid-on-central-african-republic-sex-scandal-vindicated/> accessed 6 July 2016.
[275] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) i.
[276] ibid ii.
[277] ibid 5.
[278] ibid iv.

were considered to having led to a « gross institutional failure[279] ». The UN is therefore considered to have failed its mandate in CAR's consisting in the protections of civilians[280].

In line with CAR events, Anthony Banbury, who worked for the UN for approximatively 30 years, has recently resigned from his position of assistant secretary general for field support at the UN, stating that he cared so deeply for what the UN upholds that he could not accept anymore the fact that the « so maddeningly complex[281] » bureaucracy of this organization was standing in the way of it fulfilling its original purpose. Banbury described the system as « a black hole into which disappear countless tax dollars and human aspirations, never to be seen again[282] », whilst denouncing the « sclerotic[283] » personnel recruitment system, either for sometimes being way too long, or for the fact that soldiers are deployed without due preparation for the field mission to which they are sent to, but also because the UN for example accepted to send troops in CAR from countries such as the democratic Republic of Congo and Republic of Congo, despite that they previously faced serious human rights violations allegations. He underlined for example that in 2015, peacekeepers from the Republic of Congo « arrested a group of civilians, with no legal basis whatsoever, and beat them so badly that one died in custody and the other shortly after in a hospital. In response there was hardly a murmur, and certainly no outrage, from the responsible officials in New York[284] ».

In April 2016, the UN publicly announced 108 additional cases of allegations of sexual abuse and exploitation by its personnel related to the UN peacekeeping operation in CAR[285].

---

[279] ibid v.
[280] ibid.
[281] Anthony Banbury, 'I Love the U.N., but It Is Failing' *The New York Times* (18 March 2016) <http://www.nytimes.com/2016/03/20/opinion/sunday/i-love-the-un-but-it-is-failing.html> accessed 4 April 2016.
[282] ibid.
[283] ibid.
[284] ibid.
[285] BBC News, 'Central African Republic Abuse: UN Troops Tried in DR Congo' *BBC News* (5 April 2016) <http://www.bbc.com/news/world-africa-35968296> accessed 8 July 2016.

All these abovementioned facts underline the gravity of the situation and make it more obvious that the UN needs to put even more efforts than it did before in addressing the pressuring issue of sexual abuse and exploitation of the local population of poor countries in transition while participating in peacekeeping operations. Further, this also indicates the need to look for alternative solutions to the issue, being of preventive or repressive type (egg. prosecutions), as well as victim related ones (egg. protection and right to an effective remedy).

3.3 Application of extraterritoriality principles under ECHR to the French Sangaris troops in CARs' case

As a member of the CoE, France has the responsibility to secure to all individuals *within its jurisdiction* their rights and freedoms under the ECHR, according to article 1 of the convention. Not doing so would mean violating the ECHR. Furthermore, as seen in subsection 3.1 of this chapter, the obligations under the ECHR are sometimes, depending on the right or freedom concerned, also procedural, including not only negative, but also positive obligations for member states[286] (i.e. effective investigation into alleged violations, effective prosecutions, etc.).

As previously seen in the second chapter, in cases of human trafficking and sexual abuse or exploitation, the ECtHR decided in its case-law that the state can be found as having violated the ECHR, under its articles 3 or 4 if it does not properly conduct investigations into such human rights violations allegations, and of course, according to all relevant circumstances to the given case, regardless of the abuses being performed by state officials or simple civilians[287]. However, up until now, the ECtHR only decided on cases of sexual abuse which took place literally on the physical territory of the respondent

[286] For more information see: Alastair Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Bloomsbury Publishing 2004); Dimitris Xenos, *The Positive Obligations of the State Under the European Convention of Human Rights* (Routledge 2012); Sandra Fredman, 'Human Rights Transformed: Positive Duties and Positive Rights' (Social Science Research Network 2006) SSRN Scholarly Paper ID 923936 <http://papers.ssrn.com/abstract=923936> accessed 13 July 2016.
[287] For more information see subsection 3.1 of the current paper and Aisling Reidy (n 218).

states[288]. Nonetheless, there is nothing that seems, at first sight, to stop the ECtHR from one day examining a case of sexual abuse or exploitation where this particular human rights violations took place outside a state's physical borders, if the proof in the file allows the court to consider that the victim was then, according to relevant circumstances, falling within the jurisdiction of the respondent.

Since sexual abuses and exploitation allegations arose in CAR, and since the Deputy Ambassador of France was notified, France seems to have begun to take steps in order to investigate the matter. However, according to a 2015 independent report, the UN initially refused to waive the immunity of the then Human Rights Officer in CAR in order to allow the French government to properly conduct its legal investigation, and it only did so after one year of correspondence with the latter[289].

Furthermore, in April 2016, media reported that French prosecutor started preliminary investigations into new such allegations, believed to have taken place in Dekoa town in CAR[290], some of which the French UN's Ambassador, François Delattre, described as « sickening » considering that they set forth that four underage girls would have been paid a very low amount of money by a French commander in exchange of them having sexual encounters with a dog.

The UN itself is investigating into all allegations brought to light in CAR[291]. These investigations are therefore ongoing, some having started approximatively one year ago,

[288] European Court of Human Rights (n 180) For more information, see subsection 3.1 of the current paper.
[289] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) vi.
[290] 'UN Peacekeepers Go on Trial for CAR Sex Abuse' *Al Jazeera* (5 April 2016) <http://www.aljazeera.com/news/2016/04/peacekeepers-trial-sex-abuse-car-160405040318812.html> accessed 8 July 2016.
[291] 'Paris Prosecutor Opens Inquiry into CAR Sex Abuse Claims' *France 24* (5 April 2016) <http://www.france24.com/en/20160405-paris-prosecutor-opens-inquiry-car-sex-abuse-central-africa-sangaris> accessed 8 July 2016; 'Peacekeepers Sexually Abused 108 Girls in Central African Republic: UN' *The Globe and Mail* (31 March 2016) <http://www.theglobeandmail.com/news/world/un-peacekeepers-sexually-abused-98-girls-in-central-african-republic-group-says/article29469521/> accessed 8 July 2016; Samuel Oakford, 'French Peacekeepers Allegedly Tied Up Girls and Forced Them Into Bestiality' (*VICE News*, 31 March 2016) <https://news.vice.com/article/french-peacekeepers-allegedly-tied-up-girls-and-forced-them-to-have-sex-with-dogs> accessed 9 July 2016; 'French Troops Accused of "Forcing Girls into Bestiality" in CAR' *The Independent* (31 March 2016)

some recently. However, the public information regarding them is vague and very scarce. Moreover, it is impossible to know beforehand if the investigation conducted by France is effective and if the prosecutor is truly doing everything in its power to conduct it properly in order to comply with to the strict procedural criteria of article 3 of the ECHR.

It is crucial to recall that the current study's purpose is not to establish if there is a violation to the ECHR by France in the case of such allegations against its Sangaris troops – analysis which would however belong to the court, given all circumstances of a particular given case – but to explore the possibility for the ECtHR to one day decide upon the application of its extraterritorial principles under the convention to a similar case. Yet, it can be interesting to briefly remind here that the ECHR is considered to be a living instrument[292], and if circumstances can prove that in some cases of sexual abuse or exploitation the criteria elaborated by the court in order to amount the infliction of suffering of a victim to ill-treatment or torture are met, then a violation of article 3 of the ECHR could very well be conceivable. Technically speaking, this argument might not be as easy to make as would be to prove a violation of article 2 of the ECHR (the right to life), as it has been mostly done in the past, but the court could, without a doubt, decide on a case by case basis if in such cases the threshold of article 3 was attained or not. Further, it is important to point out that in two cases of sexual abuse, the ECtHR gave considerable importance in similar cases to the following aspects:

> *rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally*[293].

<http://www.independent.co.uk/news/world/africa/french-troops-accused-of-forcing-girls-to-have-sex-with-dog-in-car-as-rape-claims-against-un-a6961711.html> accessed 9 July 2016.

[292] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [75].

[293] Aisling Reidy (n 218) 14; *AYDIN v. TURKEY* (n 227); *MASLOVA and NALBANDOV v. RUSSIA* (n 230).

These particular affirmations made by the ECtHR in 1997[294] and respectively in 2008[295] could prove to be very relevant given that a complaint of violation of article 3 of the ECHR by the French Sangaris troops would one day be submitted to the ECtHR.

That being said, in case that France would fail to properly investigate into these accusations, would it be possible to envisage a recourse for the victims to the ECtHR? Could an individual, group of individuals or NGO file a complaint to the ECtHR in a case of sexual abuse and exploitation by the French Sangrias troops whilst in mission in CAR?

3.4 Case analysis

The first question to be addressed by the ECtHR given that a similar claim would be submitted to its analysis would be regarding the admissibility of the case from a procedural point of view. Since the ECHR entered into force in France in 1974[296] and the allegations of human rights abuses in CAR took place between 2013 and 2015, the ECHR is then applicable to France. It also goes without saying that the applicant(s) would have to comply with articles 34 and 35 of the ECHR, meaning that they would have to be individuals, groups of individuals or NGOs who would then have exhausted all legal remedies at the national level and would submit their complaint to the ECtHR in a delay of maximum six months after that[297].

Second, the court would also have to decide on the admissibility of the case based on the criteria of dual attribution of wrongful conduct committed by personnel related to the UN peacekeeping operation in CAR, briefly addressed in sub-sections 2.3 and 2.4 of the previous chapter of the current paper. Therefore, if the court, in the light of all circumstances of a given case, comes to the conclusion that the acts of sexual aggression or exploitation which amount to either ill-treatment or to torture can be attributed *inter*

[294] *AYDIN v. TURKEY* (n 227).
[295] *MASLOVA and NALBANDOV v. RUSSIA* (n 230).
[296] 'Full List: Chart of Signatures and Ratifications of Treaty 005 Convention for the Protection of Human Rights and Fundamental Freedoms' (*Council of Europe. Treaty Office*, 8 July 2016) <http://www.coe.int/web/conventions/full-list> accessed 8 July 2016.
[297] Council of Europe ECHR (n 209).

alia to the TCCs, it has competence *rationae personae* in that given file[298]. Since the dual attribution principle *per se* falls outside the scope of the current study, it will then be taken for granted, for the purpose of the current case analysis – of sexual abuse and exploitation committed by Frech Sangaris troops while in mission in CAR – that here it is fulfilled.

After the ECtHR having decided on the admissibility of such a case, would it then consider the victims of these allegations to fall under France's jurisdiction – at the time of the violations – through the application of its extraterritoriality principles developed in the past few years?

As presented in the second chapter of this paper, the court recognized up until today three cases under which the extraterritorial application of its ECHR could be possible: in cases where the country is occupying the territory through military means (lawful or not)[299], if it exercises a sovereign type of power following an invitation, acquiescent or consent of the given state[300], or simply in the case where an official exercises physical control over an individual[301]. Moreover, as seen in ***Jaloud v The Netherlands*** in 2014[302], this principle can also apply when troops act under an international force mandate, in this case-law the court having assessed who exactly had the troops' full command at the moment of the violations[303]. However, it is essential not to forget that cases related to the extraterritorial application the ECHR have to be studied and considered under the light of all circumstances[304].

With regard to extraterritoriality principle's related exceptions developed by the ECtHR, it is important to first note that French Sangaris troops were in CAR not as part of the

[298] For more information see: Larsen (n 37); André Nollkaemper (n 198).
[299] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [70]; *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [138].
[300] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [71]; *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [135].
[301] *HASSAN v. THE UNITED KINGDOM* (n 161) [137].
[302] *JALOUD v. THE NETHERLANDS* (n 165) [147–149].
[303] ibid This entering once again in the admissibility decision of the court regarding the principle of dual attribution of conduct. ; See: Larsen (n 37).
[304]For more information see subsection 2.2 of the current paper.

MINUSCA, but under the mandate of the UN Security Council, in order to offer their *operational support* to UN's peacekeeping mission[305]. Sangaris troops were then under the direct command of France, their general being also French, Francisco Soriano[306]. As such, in this particular case, the troops were directly receiving orders from France itself while in CAR.

This is a very different situation from troops who find themselves officially being part of the MINUSCA, where for a court to determine who actually was commanding the troops at the time of the violations might prove itself to be more complicated from a legal point of view, since peacekeepers first of all officially considered to operate under UN's command and authority[307]. However, this is not impossible, since the court would have to look to the SOFAs signed with the respondent country and other related documents in order to assess this particular admissibility issue.

Returning to the subject, as regards the extraterritorial application of the ECHR to acts committed by French Sangaris troops in CAR, it is therefore clear that in this case it is not a question related to the occupying power exception[308], nor one where France is exercises a sovereign type of power following CAR's invitation or consent[309]. However, one could argue that French soldiers exerted a *physical control* over women and children which they sexually abused while on mission in the country. Since it is quite impossible to know details with respect to these cases, and since all the public information is very scarce in this sense, it is hard to speculate if the ECtHR would then consider so for all victims. Notwithstanding that, if one could prove that some allegations made public

[305] 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' (n 15).
[306] Vincent Duhem, 'Centrafrique : l'opération française "Sangaris" a commencé' *Jeune Afrique* (France, 6 December 2013) <http://www.jeuneafrique.com/166923/politique/centrafrique-l-op-ration-fran-aise-sangaris-a-commenc/> accessed 8 July 2016.
[307] Peacekeeping Best Practices Unit, Department of Peacekeeping Operations and United Nations (n 34) 12 and 56.
[308] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [70]; *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [138].
[309] *BANKOVIĆ AND OTHERS v. BELGIUM AND OTHERS* (n 153) [71]; *AL-SKEINI AND OTHERS v. THE UNITED KINGDOM* (n 154) [135]; Regarding the French Sangari troops, see: 'UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149' (n 15).

concerning soldiers who abused locals in their own compound[310], where no civilians normally get access, the court could then easily find, according to its reasoning in ***Hassan v The United Kindgdom*** (2014)[311], that the victims were at that moment under France's jurisdiction. As goes for cases where the violations took place outside their bases, the ECtHR would then have to study the full circumstances of the case in order to determine if those were also under France's jurisdiction.

What would be the case if similar allegations would come to light against troops belonging to members of the CoE which would also be officially part of a UN peacekeeping field mission, such as MINUSCA? Since information to this regard is almost inexistent, one can only underline that following the cases of ***Hassan v The United Kindgdom***[312] and ***Jaloud v The Netherlands***[313] both decided by the ECtHR in 2014, the court would have to analyze the same abovementioned questions, and if it would decide to apply the *full command* principle developed in the latter mentioned case, always depending on all the circumstances of such a dispute, it might come to the conclusion that one of its member states violated the ECHR while acting under the UN command. That also of course, if the violation is proven to attain for example the threshold of article 3 of the ECHR, in cases of sexual abuse, the case being different under other provisions of the convention. Nonetheless, such a case remained to be argued in order to see what type of reasoning the ECtHR would then embrace.

As for article 3 and its positive obligations, it is important to recall that in the ECtHR past case-law, the court considered some member states to have violated this provision in cases where their internal laws were not allowing effective prosecutions or were presenting other such important gaps[314]. This aspect in itself did not seem to be much explored by

[310] Marie Deschamps, Hassan B. Jallow and Yasmin Sooka (n 50) ii; 'French Troops Accused of "Forcing Girls into Bestiality" in CAR' (n 291).
[311] *HASSAN v. THE UNITED KINGDOM* (n 161) [76].
[312] *HASSAN v. THE UNITED KINGDOM* (n 161).
[313] *JALOUD v. THE NETHERLANDS* (n 165).
[314] *M.C. v. BULGARIA* (n 216).

the court in the past, but it could constitute a very interesting path to be explore more in depth in the light of the present study[315].

3.5 Conclusion

In conclusion, it would seem plausible for the ECtHR to have jurisdiction in order to assess cases of sexual abuse and exploitation by its member states' troops sent abroad to fulfill an international mandate under the UN peacekeeping operations system, as well as to find them responsible for these violations, given that at the time of the crime, according to all circumstances of the case and in light of all criteria developed by the court as regards to extraterritoriality application of its human rights convention, the court would consider the victims to fall under the respondent state's jurisdiction, as requested by article 1 of the ECHR.

[315] See also: Aisling Reidy (n 218) 39.

General conclusion

UN's contribution to international peace and security was and remains important. However, during the past two decades, its image began to be tainted with allegations brought to light by NGOs and international media as regards to its personnel related to peacekeeping operations being involved in human trafficking, sexual abuse and exploitation of locals. These news created public outrage and brought the UN itself to address the issue. As a consequence, the organization adopted various strategies in order to prevent and combat this phenomenon which it acknowledged, and which is seemingly increasing with the passing of the years. However, no matter how much it tried, it has not yet succeeded, these measures being either not implemented or lacking legally binding force towards its member states. With the uproar of the ongoing scandal of sexual abuse and exploitation by its personnel during the ongoing peacekeeping operation in CAR, the UN is still struggling to find effective solutions for this issue, the outcome remaining yet to be seen.

In the meantime, this paper briefly explored other solutions, such as the prosecution of perpetrators by their own sending countries, since the latter have exclusive jurisdiction in such matters, given the immunities from which their nationals benefit during peacekeeping operations. As seen in the paper, this is one of the biggest problems related to the issue of sexual abuse and exploitation by personnel related to the organization's peacekeeping operations, since in the case of civilians it may happen that the TCCs national laws contain important gaps which do not allow its extraterritorial application, the TCCs therefore lacking jurisdiction. Added to that is the lack of cooperation between the TCC and the UN itself, but also the fact that the TCCs, as proven in the past, do not seem to follow these cases in order to investigate the allegations and therefore prosecute the perpetrators, despite the UN calling upon them multiple times to do everything in their power in order to seriously address the issue. Nonetheless, it is interesting to note that the UN does not seem to keep a record of which countries did indeed adapted their national laws in accordance with these requests, nor of those who prosecuted – or not – those against whom allegations of violations were made.

Would there be anything else that could possibly contribute to address this particular issue, even if only in part? In order to answer to this question, this paper concentrated itself on the European regional system of human rights, known as the most developed and effective up until now. However, nothing prevents the study of other regional systems whilst looking for a solution to this pressuring issue.

As such, the core of the current paper was mainly to ascertain if through the ECtHR's past and future case-law it would be possible to put pressure on the CoE members in order for them to either proceed to effective investigations and prosecutions of their nationals involved in accusations of sexual abuse and exploitation whilst contributing to UN peacekeeping operations, either to adapt their law accordingly.

The European system proved to be an interesting case for the current study due to its past recent year's case-law on extraterritoriality application of its ECHR. This convention foresees that its member states are bound to secure the rights and freedoms of all those within their jurisdiction. The court, while called upon to decide on cases where nationals of CoE member countries violated the ECHR outside their own countries' physical borders, underlined that jurisdiction is primarily territorial, but further allowed such jurisdiction to be extended, in some particular cases, to acts performed outside their territories. Therefore, the court ended up developing an interesting and controversial case-law concerning the extraterritorial application of its convention.

Looking in particular at the case of CAR and allegations of sexual abuse and exploitation brought *inter alia* against members of the French Sangaris soldiers who were then taking part of UN's broad peacekeeping operation in the country, the paper studied the likelihood of the applicability of the extraterritorial case-law developed by the ECtHR to this situation. Set aside questions related to the admissibility of an akin case submitted in front of this court – the test of article 34 and 35 of the convention, but also the criteria of dual attribution of conduct – and the issue of the threshold of article 3 (prohibition of ill-treatment and torture), which would then have to be decided upon beforehand, it has been

found that one could argue that at least some of the victims of such human rights abuses could be considered as falling under France's jurisdiction according to article 1 of the ECHR. This would especially be conceivable following the reasoning used by the Grand Chamber in its 2014 aforementioned decisions in ***Hassan v The United Kingdom*** and ***Jaloud v The Netherlands***. As a consequence, and taking into consideration all relevant circumstances of such a case, it could be argued that some of the sexual abuses and exploitation committed by the French troops in CAR represent a violation of the ECHR, if there is factual proof sustaining that the soldiers were then exercising physical control over the victims. Technically speaking such a case would not be easy to build, however, if allegations upholding that some of these abuses were moreover taking place in the soldier's compounds would be proven to be accurate, it would then be easier to claim for this to have happened under France's jurisdiction.

As mentioned in the current paper, transparency is an important issue in the case of these violations, which makes it impossible for an outsider to duly evaluate the applicability of ECtHR's criteria to a case of sexual abuse and exploitation by personnel related to UN peacekeeping operations. Nevertheless, it has been found that such a case could be submitted one day in front of the ECtHR, which would then have to asses it in light of all circumstances. Moreover, as seen in ***Jaloud v The Netherlands*** (2014), the court seems to tend to accept that national contingent's acts can still be considered as falling under the ambit of article 1 of the ECHR, even when they are part of an international force fulfilling an international mandate. Nevertheless, only a real practical case would give the right answer to this question, especially since the court didn't develop very precise criteria as regards to the legal principles studied in this paper, the court deciding on similar matter on a case-by-case basis.

Bibliography

CASE-LAW

AKKOC v TURKEY [2000] European Court of Human Rights nos. 22947/93 and 22948/93

AL-SKEINI AND OTHERS v THE UNITED KINGDOM [2011] European Court of Human Rights 55721/07

AYDIN v TURKEY [1997] European Court of Human Rights 23178/94

BANKOVIĆ AND OTHERS v BELGIUM AND OTHERS [2001] European Court of Human Rights 52207/99

BEHRAMI and BEHRAMI v FRANCE *(admissibility)* [2007] European Court of Human Rights 71412/01

BS v SPAIN [2012] European Court of Human Rights 47159/08

DIKME v TURKEY [2000] European Court of Human Rights 20869/92

HASSAN v THE UNITED KINGDOM [2014] European Court of Human Rights 29750/09

IG v MOLDOVA [2012] European Court of Human Rights 53519/07

IP v THE REPUBLIC OF MOLDOVA [2015] European Court of Human Rights 33708/12

IRELAND v THE UNITED KINGDOM (European Court of Human Rights)

JALOUD v THE NETHERLANDS [2014] European Court of Human Rights 47708/08

KOMPASS v SECRETARY-GENERAL OF THE UNITED NATIONS [2015] UNITED NATIONS DISPUTE TRIBUNAL UNDT/GVA/2015/126

LE v Greece [2016] European Court of Human Rights 71545/12

LOIZIDOU v TURKEY [1996] European Court of Human Rights 15318/89

MASLOVA and NALBANDOV v RUSSIA [2008] European Court of Human Rights 839/02

MC v BULGARIA [2004] European Court of Human Rights 39272/98

Mothers of Srebrenica et al v State of the Netherlands and the UN [2014] The Hague District Court 295247 / HA ZA 07-2973

Netherlands (Ministry of Defence and Ministry of Foreign Affairs) v Nuhanović, *Final appeal judgment, ECLI/NL/HR/2013/BZ9225, ILDC 2061 (NL 2013), 12/03324, 6th September 2013, Supreme Court [HR]*

RANTSEV v CYPRUS and RUSSIA [2010] European Court of Human Rights 25965/04

SALMAN v TURKEY [2000] European Court of Human Rights 21986/93

SARAMATI v FRANCE, GERMANY and NORWAY *(admissibility)* [2007] European Court of Human Rights 78166/01

SOERING v THE UNITED KINGDOM [1989] European Court of Human Rights 14038/88

X AND Y v THE NETHERLANDS [1985] European Court of Human Rights (Chamber) 8978/80

TREATIES

Convention on the privileges and immunities of the United Nations 1946

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 1950 [ETS 5]

UNGA, The Universal Declaration of Human Rights 1948 [217 A (III)]

United Nations, Charter of the United Nations 1945 [1 UNTS XVI]

UN DOCUMENTS

UN Secretary-General Ban Ki-moon, 'Statement Attributable to the Spokesman for the Secretary-General on the Appointment of a Panel on the External Independent Review of the United Nations Response to Allegations of Sexual Exploitation and Abuse and Other Serious Crimes by Members of Foreign Military Forces Not under United Nations Command in the Central African Republic' (*United Nations*, 22 June 2015) http://www.un.org/sg/statements/index.asp?nid=8746

UNGA "Criminal Accountability of United Nations Officials and Experts on Mission" (11 September 2007) UN Doc A/62/329' https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/502/05/PDF/N0750205.pdf?OpenElement

UNGA "Report of the Office of Internal Oversight Services on Peace Operations for the Period from 1 January to 31 December 2015" (2016) UN Doc A/70/318' https://oios.un.org/resources/2016/03/IUfbHC0n.pdf

UNGA "Report of the Secretary-General on the Activities of the Office of Internal Oversight Services" (2002) UN Doc A/57/465' http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SE%20A%2057%20465.pdf

UNGA "Report of the Secretary-General on the Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2015) UN Doc A/69/779 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/041/76/PDF/N1504176.pdf

UNGA "Report of the Secretary-General on the Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (2016) UN Doc A/70/729' http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_70_729.pdf

UNGA "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"' (2005) UN Doc A/59/710' http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/710

UNGA Res 57/306 (22 May 2003) Un Doc A/RES/57/306' http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SE%20ARES%2057%20306.pdf

UNSC Res 1925 (28 May 2010) UN Doc S/RES/1925' http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1925(2010)

UNSC Res 2127 (5 December 2013) UN Doc S/RES/2127'
http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2127(2013)

UNSC Res 2149 (10 April 2014) UN Doc S/RES/2149'
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2149(2014)

UNSC Res 2272 (11 March 2016) UN Doc S/RES/2272'
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2272(2016)

UNSC, 'Statement by the President of the Security Council' (7 April 2009) [S/PRST/2009/5]
http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAR%20SPRST20095.pdf

UNVFVT, 'Interpretation of Torture in the Light of Practice and Jurisprudence of International Bodies'
http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf

ARTICLES, BOOKS AND OTHER SOURCES

AIDS-FREE WORLD, 'The UN's Dirty Secret: The Untold Story of Anders Kompass and Peacekeeper Sex Abuse in the Central African Republic' (Code Blue, 29 May 2015)
http://www.codebluecampaign.com/carstatement/

AL JAZEERA. 'UN Peacekeepers Go on Trial for CAR Sex Abuse' Al Jazeera (5 April 2016)
http://www.aljazeera.com/news/2016/04/peacekeepers-trial-sex-abuse-car-160405040318812.html

AMNESTY INTERNATIONAL. 'Kosovo (Serbia and Montenegro): "So Does It Mean That We Have the rights?" Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo' (Amnesty International 2004)
https://www.amnesty.org/en/documents/document/?indexNumber=eur70%2f010%2f2004&language=en

ASCENSIO, Hervé. 'Contribution to the Work of the UN Secretary-General's Special Representative on Human Rights and Transnational Corporations and Other Businesses - Extraterritoriality as an Instrument'
https://www.univ-paris1.fr/fileadmin/IREDIES/Contributions_en_ligne/H._ASCENSIO/Extraterritoriality__Human_Rights_and_Business_Entreprises.pdf

ASSER INSTITUTE. 'The State of the Netherlands v. Hasan Nuhanović' (International Crimes Database, 2013)
http://www.internationalcrimesdatabase.org/Case/1005/The-Netherlands-v-Nuhanovi%C4%87/

BANBURY, A. 'I Love the U.N., but It Is Failing' The New York Times (18 March 2016)
http://www.nytimes.com/2016/03/20/opinion/sunday/i-love-the-un-but-it-is-failing.html

BELLAL, A. (ed), The War Report: Armed Conflict in 2014 (Oxford University Press 2015)

BOWCOTT, O, 'Report Reveals Shame of UN Peacekeepers' The Guardian (25 March 2005)
https://www.theguardian.com/world/2005/mar/25/unitednations

BBC

'Central African Republic Abuse: UN Troops Tried in DR Congo' BBC News (5 April 2016)
http://www.bbc.com/news/world-africa-35968296

'Central African Republic Country Profile' (BBC News, 31 March 2016)
http://www.bbc.com/news/world-africa-13150040

'Central African Republic Profile - Timeline' (BBC News, 10 February 2016)
http://www.bbc.com/news/world-africa-13150044

'Uruguay Marines Charged over Haiti Abuse' BBC News (24 September 2012)
http://www.bbc.com/news/world-latin-america-19708878

BURKE RS

Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility under International Law (Martinus Nijhoff Publishers 2014)

'Status of Forces Deployed on UN Peacekeeping Operations: Jurisdictional Immunity' (2011) 16 Oxford University Press 63

CENTER FOR ECONOMIC AND POLICY RESEARCH. 'MINUSTAH Officers Found Guilty of Rape – But Get Just One Year in Prison', CEPR, (13 March 2012)
http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/minustah-officers-found-guilty-of-rape-but-get-just-one-year-in-prison

COUNCIL OF EUROPE.

'Chart of Signatures and Ratifications of Treaty 005 - Convention for the Protection of Human Rights and Fundamental Freedoms' (Treaty Office)
https://www.coe.int/web/conventions/full-list

Full List: Chart of Signatures and Ratifications of Treaty 005 Convention for the Protection of Human Rights and Fundamental Freedoms' (Council of Europe. Treaty Office, 8 July 2016)
http://www.coe.int/web/conventions/full-list

CSÁKY, Corinna. 'No One to Turn To: The under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers' (Save the Children UK 2008)
http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/27_05_08_savethechildren.pdf

DEARDEN, LIzzie. 'French Troops Accused of "Forcing Girls into Bestiality" in CAR' The Independent (31 March 2016)
http://www.independent.co.uk/news/world/africa/french-troops-accused-of-forcing-girls-to-have-sex-with-dog-in-car-as-rape-claims-against-un-a6961711.html

DEFEIS, EF. 'UN Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity' (2008) 7 Wash. U. Global Stud. L. Rev. 185

DESCHAMPS, Marie, Hassan B. JALLOW and Yasmin SOOKA, 'Taking Action on Sexual Exploitation and Abuse by Peacekeepers - Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic' (United Nations 2015)
http://www.un.org/News/dh/infocus/centafricrepub/Independent-Review-Report.pdf

DUHEM, Vincent. 'Centrafrique: l'opération française "Sangaris" a commencé' Jeune Afrique (France, 6 December 2013)
http://www.jeuneafrique.com/166923/politique/centrafrique-l-op-ration-fran-aise-sangaris-a-commenc/

ENGDAHL, O. Protection of Personnel in Peace Operations: The Role of the 'Safety Convention' Against the Background of General International Law (Martinus Nijhoff Publishers 2007)

EUROPEAN COURT OF HUMAN RIGHTS.

'Factsheet – Violence against Women'
http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf

'European Convention on Human Rights - Official Texts, Convention and Protocols' (European Court of Human Rights)
http://www.echr.coe.int/pages/home.aspx?p=basictexts

'Factsheet – Trafficking in Human Beings'
http://www.echr.coe.int/Documents/FS_Trafficking_ENG.pdf

FERSTMAN, Carla. 'Criminalizing Sexual Exploitation and Abuse by Peacekeepers' (2013) Special Report 335 United States Institute of Peace
https://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf

FRANCE 24, 'Paris Prosecutor Opens Inquiry into CAR Sex Abuse Claims' France 24 (5 April 2016)
http://www.france24.com/en/20160405-paris-prosecutor-opens-inquiry-car-sex-abuse-central-africa-sangaris

FREDMAN, S. 'Human Rights Transformed: Positive Duties and Positive Rights' (Social Science Research Network 2006) SSRN Scholarly Paper ID 923936
http://papers.ssrn.com/abstract=923936

FREEDMAN, Rosa.

Failing to Protect: The UN and the Politicisation of Human Rights (C Hurst & Co Publishers Ltd 2014)

'How Can We Hold the UN Accountable for Sexual Violence?' (Code Blue, 7 February 2016)
http://www.codebluecampaign.com/latest-news/2016/2/7

GANI, A. 'What Is the European Convention on Human Rights?' The Guardian (3 October 2014) http://www.theguardian.com/law/2014/oct/03/what-is-european-convention-on-human-rights-echr

HALLIDAY, J. 'UN Peacekeeping Chief in CAR Sacked over Sex Abuse Claims' The Guardian (12 August 2015) https://www.theguardian.com/world/2015/aug/12/un-peacekeeping-chief-central-african-republic-resigns-babacar-gaye

HORWOOD, C and al. 'The Shame of War. Sexual Violence against Women and Girls in Conflict.' (United Nations Office for the Coordination of Humanitarian Affairs 2007) http://lastradainternational.org/lsidocs/IRIN-TheShameofWar-fullreport-Mar07.pdf

KLABBERS, J. An Introduction to International Institutional Law (2 edition, Cambridge University Press 2009)

KOCH, IE. Human Rights As Indivisible Rights: The Protection of Socio-Economic Demands Under the European Convention on Human Rights (Martinus Nijhoff Publishers 2009) http://works.bepress.com/idaelisabeth_koch/9/

LARSEN, KM. 'Attribution of Conduct in Peace Operations: The "Ultimate Authority and Control" Test' (2008) 19 European Journal of International Law 509

LAVILLE, S.

'UN Aid Worker Suspended for Leaking Report on Child Abuse by French Troops' The Guardian (29 April 2015) https://www.theguardian.com/world/2015/apr/29/un-aid-worker-suspended-leaking-report-child-abuse-french-troops-car

'UN Whistleblower Who Exposed Sexual Abuse by Peacekeepers Is Exonerated' The Guardian (18 January 2016) https://www.theguardian.com/world/2016/jan/18/un-whistleblower-who-exposed-sexual-abuse-by-peacekeepers-is-exonerated

LAW, Jonathan and Elizabeth A. MARTIN, 'A Dictionary of Law' http://www.oxfordreference.com/view/10.1093/acref/9780199551248.001.0001/acref-9780199551248-e-3701

LEDERER, Edith M. 'Peacekeepers Sexually Abused 108 Girls in Central African Republic: UN' The Globe and Mail (31 March 2016) http://www.theglobeandmail.com/news/world/un-peacekeepers-sexually-abused-98-girls-in-central-african-republic-group-says/article29469521/

LYNCH, Colum. 'The U.N. Official Who Blew the Lid off Central African Republic Sex Scandal Vindicated' https://foreignpolicy.com/2015/12/17/the-u-n-official-who-blew-the-lid-on-central-african-republic-sex-scandal-vindicated/

MENDELSON, Sarah E. 'Barracks and Brothels | Center for Strategic and International Studies' (Center for Strategic and International Studies (CSIS) 2005) https://www.csis.org/analysis/barracks-and-brothels

MILANOVIC, Marko. Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy (1st edn, Oxford University Press 2011)

MILLER, Anthony J. 'PERSPECTIVE: Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations' (2006) 39 Cornell International Law Journal 71

MOWBRAY, A.

The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights (Bloomsbury Publishing 2004)

Cases, Materials, and Commentary on the European Convention on Human Rights (OUP Oxford 2012)

MURPHY, R. 'An Assessment of UN Efforts to Address Sexual Misconduct by Peacekeeping Personnel' (2006) 13 International Peacekeeping 531

NDULO, M. 'The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions' (2009) 27 Berkeley Journal of International Law 127

NOLLKAEMPER, André. 'André Nollkaemper; "Dual Attribution: Liability of the Netherlands for Conduct of Dutchbat in Srebrenica" - Articles - Nuhanovic Foundation' [2011] Amsterdam Law School Research Paper No. 2011-29 http://www.nuhanovicfoundation.org/en/articles/andre-nollkaemper-dual-attribution-liability-of-the-netherlands-for-conduct-of-dutchbat-in-srebrenica

O'BRIEN, Melanie.

'Overcoming Boys-Will-Be-Boys Syndrome: Is Prosecution of Peacekeepers in the International Criminal Court for Trafficking, Sexual' http://lup.lub.lu.se/student-papers/record/1554856

'Protectors on Trial? Prosecuting Peacekeepers for War Crimes and Crimes against Humanity in the International Criminal Court' (2012) 40 International Journal of Law, Crime and Justice 223

OAKFORD, Samuel. 'French Peacekeepers Allegedly Tied Up Girls and Forced Them Into Bestiality' (VICE News, 31 March 2016) https://news.vice.com/article/french-peacekeepers-allegedly-tied-up-girls-and-forced-them-to-have-sex-with-dogs

PETROVA, **Milena.** 'Criminal Misconduct and Sexual Offenses Committed by UN Personnel During Peacekeeping Missions' (Beyond Intractability, February 2015) http://www.beyondintractability.org/library/criminal-misconduct-and-sexual-offenses-committed-un-personnel-during-peacekeeping-missions

PATI, R. 'States' Positive Obligations with Respect to Human Trafficking: The European Court of Human Rights Breaks New Ground in Rantsev v. Cyprus & Russia' (Social Science Research Network 2011) SSRN Scholarly Paper ID 2014460 http://papers.ssrn.com/abstract=2014460

PIOTROWICZ, R. 'States' Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations' (2012) 24 International Journal of Refugee Law 181

RASHKOW, **Bruce.** 'Remedies for Harm Caused by UN Peacekeepers' (American Society of International Law, 2 April 2014) https://www.asil.org/blogs/remedies-harm-caused-un-peacekeepers

REIDY, **Aisling.** 'The Prohibition of Torture: A Guide to the Implementation of Article 3 of the European Convention on Human Rights' [2003] Council of Europe https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff4c

REMBERT, Boom. 'Impunity of Military Peacekeepers: Will the UN Start Naming and Shaming Troop Contributing Countries?' (2015) 19 American Society of International Law https://www.asil.org/insights/volume/19/issue/25/impunity-military-peacekeepers-will-un-start-naming-and-shaming-troop

SARI, Aurel. 'Jaloud v Netherlands: New Directions in Extra-Territorial Military Operations' http://www.ejiltalk.org/jaloud-v-netherlands-new-directions-in-extra-territorial-military-operations/

SECURITY COUNCIL REPORT.

'Central African Republic Chronology of Events: Security Council Report' http://www.securitycouncilreport.org/chronology/central-african-republic.php?page=all&print=true

'Update Report No. 3: Sexual Exploitation and Abuse by UN Peacekeeping Personnel' (20 February 2006) http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTIsG-b-1429245.php?print=true

SHEERAN, S. PROF. L. ZEGVELD, DR. M. ZWANENBURG and E. WILMSHURST. 'Peacekeeping and Accountability' (Chatham House - The Royal Institute of International Affairs 2014) https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140528PeacekeepingAccountability.pdf

SIEFF, Kevin.

'U.N. Says Some of Its Peacekeepers Were Paying 13-Year-Olds for Sex' (Washington Post, 11 January 2016) https://www.washingtonpost.com/world/africa/un-says-some-of-its-peacekeepers-were-paying-13-year-olds-for-sex/2016/01/11/504e48a8-b493-11e5-8abc-d09392edc612_story.html

'The Growing U.N. Scandal over Sex Abuse and "peacekeeper Babies"' Washington Post (27 February 2016) http://www.washingtonpost.com/sf/world/2016/02/27/peacekeepers/

SIMIĆ O and M, O'BRIEN. '"Peacekeeper Babies": An Unintended Legacy of United Nations Peace Support Operations' (2014) 21 International Peacekeeping 345

THE NORWEGIAN NOBEL INSTITUTE, 'United Nations Peacekeeping Forces - Facts' (Nobelprize.org, 2014) https://www.nobelprize.org/nobel_prizes/peace/laureates/1988/un-facts.html

United Nations.

'Fact Sheet on Sexual Exploitation and Abuse' http://www.un.org/en/peacekeeping/documents/2015factsheet.pdf

'Conduct and Discipline' (United Nations Peacekeeping) http://www.un.org/en/peacekeeping/issues/cdu

'History of Peacekeeping - Post Cold-War Surge.' (United Nations Peacekeeping) http://www.un.org/en/peacekeeping/operations/surge.shtml

'Human Rights' (United Nations Peacekeeping) http://www.un.org/en/peacekeeping/issues/humanrights.shtml

'Mandates and the Legal Basis for Peacekeeping.' http://www.un.org/en/peacekeeping/operations/pkmandates.shtml

'Peace and Security' (United Nations Peacekeeping) http://www.un.org/en/peacekeeping/operations/peace.shtml

Peacekeeping Best Practices Unit, Department of Peacekeeping Operations and United Nations, 'Handbook on United Nations Multidimensional Peacekeeping Operations' http://walterdorn.net/pdf/Peacekeeping-Handbook_UN_Dec2003.pdf

'Peacekeeping Fact Sheet' (United Nations Peacekeeping, 30 April 2006) http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml

‘Secretary-General’s Bulletin, “Special Measures for Protection from Sexual Exploitation and Sexual Abuse” (2003) UN Doc ST/SGB/2003/13’ http://www.unhcr.org/protection/operations/405ac6614/secretary-generals-bulletin-special-measures-protection-sexual-exploitation.html

‘Troop and Police Contributors’ (United Nations Peacekeeping) http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml

‘UN News - Video: Senior UN Official Visits Central African Republic to Focus on Stronger Measures against Sexual Abuse’ (UN News Service Section, 8 April 2016) http://www.un.org/apps/news/story.asp?NewsID=53644&&Cr=sexual%20exploitation&&Cr1=#.V0240Ebl8wN

’What Is Peacekeeping?’ (United Nations Peacekeeping) http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml

UNITED NATIONS RADIO. Prosecutions in UN Sex Abuse Cases Underway’, United Nations Radio (13 May 2016) http://www.unmultimedia.org/radio/english/2016/05/prosecutions-in-un-sex-abuse-cases-underway/#.V1FrMUbl8wN

VAN HOOGSTRATEN, JS. ‘Central African Republic’ (Encyclopaedia Britannica, 19 April 2016) https://global.britannica.com/place/Central-African-Republic

VANDENBERG, Martina. ‘Bosnia and Herzegovina Hopes Betrayed: Trafficking of Woman and Girls to Bosnia and Herzegovina for Forced Prostitution’ (2002) 14 Human Rights Watch 74

WORSTER, William Thomas. ‘Immunities of United Nations Peacekeepers in the Absence of a Status of Forces Agreement’ (2009) 47, 2008 Revue de Droit Militaire et de Droit de la Guerre http://www.ismllw-be.org/session/2013_03_26%20Immunities%20of%20United%20Nations%20Peacekeepers%20in%20the%20Absence%20of%20a%20Status%20of%20Forces%20Agreement%20-%20W%20T%20WORSTER.pdf

XENOS D. The Positive Obligations of the State Under the European Convention of Human Rights (Routledge 2012)