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PROTECTING OR VIOLATING HUMAN RIGHTS?  
THE CASE OF SEX ABUSE BY PEACEKEEPERS AND THE  
IMPUNITY OF THE U.N. PERSONNEL

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# Table of Contents

<b>List of abbreviation</b> .....	4
<b>Introduction</b> .....	5
<b>Chapter I - Peacekeeping Operations</b> .....	9
1.1 Introduction to the chapter.....	9
1.2 An overview on peacekeeping mission.....	10
1.3 Main development during the decades .....	13
1.4 Structure of the peacekeeping missions .....	17
1.5 Explanation of states contribute in UN operations .....	19
1.6 The training of peacekeepers .....	21
1.7 Selection of militaries .....	25
1.8 Some considerations .....	29
<b>Chapter II - The United Nation as Human Right violator.</b> .....	31
2.1 Introduction to the Chapter .....	31
2.2 Violation of Human Rights by the UN.....	32
2.3 Sexual exploitation and abuse by peacekeepers .....	38
2.3.1 MINUSTAH.....	39
2.3.2 AMISOM .....	43
2.4 Short and long term consequences. ....	45
2.5 Reasons for unreported violence.....	47
2.6 Forcing and reinforcing the military culture .....	51
2.7 Some considerations .....	54
<b>Chapter III - The Legal Framework</b> .....	58
3.1 Introduction to the Chapter .....	58
3.2 A matter of responsibility .....	59
3.3 Legal Framework .....	65
3.3.1 Immunity dilemma .....	69
3.4 A matter of Jurisprudence.....	73
3.5 Application of the legal framework.....	79
3.5.1 Legal Actions in Uruguay.....	79
3.5.2 Paternity claim .....	81
3.6 Empower women and rethinking the role of peacekeepers .....	82
3.7 Some considerations .....	85
<b>Conclusion</b> .....	89
<b>Bibliography</b> .....	98

## **List of abbreviation**

AU	African Union
AMISOM	African Union Mission in Somalia
ECHR	European Court of Human Rights.
MINUSTAH	United Nations Stabilization Mission in Haiti
MINUJUSTH	United Nations Mission for Justice Support in Haiti
MOU	Model Memorandum of Understanding
PKO	Peacekeeping Operations
ICCPR	International Convention on Civil and Political Rights.
ICTY	International Criminal Tribunal for the former Yugoslavia
SEA	Sex Exploitation and abuse
SOFA	Status of Force Agreement
UDHR	Universal Declaration of Human Rights
UNOSOM	United Nation Operation in Somalia

## **Introduction**

The need to write about peacekeepers comes from a desire to show that it is always important to pay attention to people who should protect us. “Quis custodiet ipso custodies” said Jovenal in one of his collection of satires.

Understanding reality is not always simple. The U.N. had been created to protect from the atrocities of the Second World War and the peacekeeping had been implemented to comply with the purpose to maintain peace and security in the world.

The nature of the conflict had changed and consequently, the peacekeepers had been involved more in the daily life of the host country. Militaries had increased their participation in humanitarian aid rather than combat on the battlefield and this circumstance had facilitated the perpetration of exploitation.

This issue is raised by the constant reporting of allegations of human rights abuses committed by peacekeepers, which not only cause physical and mental harm to the survivors but also destroy the missions' reputation and public trust in the U.N.

The role of authority should be always questioned.

In this thesis, I try to give a multidimensional perspective of the issue because according to the numerous reporting it is not about an individual breaking rules behaviour rather it is a systematic misconduct perpetrated by many militaries.

In order to better comprehend the situation, it is necessary to explore how peacekeepers and local residents interact daily.

The analysis starts with the study of the agency and its works. After reporting some violations of human rights, it will be identified the main legal framework available for the U.N. personnel.

The aim of this thesis arose from the intention to better analyse the whole system, trying to avoid oversimplification and proceed bottom up of the problem.

The serious human rights violations that are all described in this dissertation are just the tip of the iceberg.

The allegations of abuses by peacekeepers are unfortunately no longer news in the field, thus more attention must be paid to this issue. The testimonies reported in this thesis are all secondary sources, which had taken from NGOs reports, independent interviews and some U.N. investigations.

The thesis will be criticized the works of the Security Council resolutions which had focused more on general implementation rather than the protection of local communities.

In writing this dissertation I questioned myself on how many women had been abused, traumatized and exploited by peacekeepers while the UN's eyes were closed.

This dissertation is dedicated to all the women who were denied justice and it is directed against all the offenders who hide behind the outdated bureaucratic system that cannot effectively solve the problem. It focuses on social injustice.

The purpose of this thesis is to condemn this behaviour and to investigate the socio-economic condition which had allowed peacekeepers to perpetrate human rights violations.

In addition, through the lens of different studies such as feminist, historical and political we discuss some potential changes in the U.N. peacekeeping sector.

This thesis proceeds as follows.

The first chapter presents the peacekeeping agency, starting with a general overview of the mission showing the main development from an observation mandate to more involved work with local communities. It will give the tools to understand the structure and the hierarchy present in the agency. It will present how the Security Council decides to deploy a U.N. mission, the preliminary investigation and the final resolution.

As the U.N. is a corporate agency, it doesn't hold proper military troops, for this the states deploy their militaries which work under the U.N. flag.

We will explore the reasons why states decide to participate in peacekeeping operations; Is it motivated by altruism or by self-interest?

It explains how sending nations and the U.N. choose and train its troops.

The end of the chapter will provide some concrete instances of how the U.N. had accepted military personnel who were accused of human rights violations in their nations.

The second chapter is the heart of the thesis, it will report the different violations of human rights by the peacekeepers. It will discuss what means that an organization violates human rights and it will give some important examples including the misconduct during the Somali intervention or the violation of fundamental rights in the former Yugoslavia.

We will address some of the many missions accused of human rights violations. At the beginning of the new century, numerous scandals arose in Haiti, the Democratic Republic of Congo and Liberia

The chapter tried to go further than the simple report of the abuses, rather it gives possible explanations for some problems affecting the collection of interviews. The culture of silence and the fear of repercussions are other explanations for the unreport of violations.

In addition, it will explain the social conditions which allowed militaries in perpetrate human rights violations.

According to reports, the MINUSTAH mission in Haiti and the AMISOM operation in Somalia, define accurately through interviews, the key socioeconomic factors that influence this misconduct's perpetrators.

The case of AMISOM will demonstrate the modo operandis that the soldiers used to get into contact with local women.

Next, we'll examine the major immediate and long-term effects that the abuse has on women, including pain and trauma. The birth of a child is an underestimated issue, many had been the women claiming paternity to peacekeepers and few had been the replayed. We analyse how repatriation increases the possibility for militaries to flee from their responsibilities.

The chapter will provide a military viewpoint on the matter, based on some interviews done by independent experts. It will discuss the concept of military masculinity as a possible explanation for the preparation of human rights violations.

The third chapter addresses the legal framework of the topic. States reserve exclusive jurisdiction for their military misconduct. Thus independent experts and the U.N. can only investigate allegations of human rights violations but they don't have the possibility of jurisdiction. The major barrier to a legitimate trial is that criminal jurisdiction can only be pursued by the sending states.

The chapter, thanks to the studies of some scholars, provides a possible solution to this justice exclusivity. It is considering the Rome State as a potential tool to hold United Nations personnel responsible for unlawful acts.

It is undoubtedly a difficult assignment to challenge the state jurisdiction, however, it is essential to increase the criminal accountability of peacekeeping missions to give more social justice.

From great powers come great responsibilities and it is time that peacekeepers respond to their unlawful acts.





## **Chapter I - Peacekeeping Operations.**

### 1.1 Introduction to the chapter

The first chapter aims to provide an overview of the UN peacekeeping mission.

The focus is to briefly resume the history of peacekeeping to show the evolution of the missions and the complex environment in which the militaries are involved in the local communities. We will see how from observation missions, the peacekeeping evolved to a more permanent presence in the territory of conflict.

It will explain the organisation and hierarchy of peacekeeping as well as the institutions and people participating in the operations.

The academic literature is filled of articles regarding the main failures in the UN intervention, from the incapability to keep the cease-fire to the inaction in front of massacres and genocide.

It is not the purpose of this thesis to analyse the failure of the peacekeeping missions, however, it is necessary to discuss the changes implemented during the decades.

It will show the main recommendations applied by the UN to address the difficulties rise during the time of peacekeeping missions.

This chapter also analyses the reasons why states participate in these U.N. missions exploring the main theoretical frames provided by scholars.

It will show the structure of a peacekeeping mission, from the beginning, the approval of the mandate, to the deployment of militaries. The intent is to explain how a peacekeeper is selected and trained. It will discuss the consequences due to a superficial approach in the training and the selection procedure.

## 1.2 An overview on peacekeeping mission

Many books have been written about peacekeeping operations, many are those that analyse the failure of the missions<sup>1</sup> and many are the academics who blame the U.N. for not taking action. It has frequently been argued how the Security Council is unable to reach an unanimity on the measures necessary to protect international security.

Even if the topic is largely debated, it is difficult to define the term peacekeeping. “While everyone recognizes and understands what peacekeeping is, no consensus exists on its definitions”<sup>2</sup>.

According to the U.N. Charter, Chapter VI defines the ‘Pacific settlement of disputes’ in which the articles settle the base for resolving disputes through a diplomatic protocol. The main ways described are by “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”<sup>3</sup>

Chapter VII establishes provisions related to “Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression”. In other words, if the previous measures supplied cannot resolve the dispute, the article 43 of the Charter authorized all members of the U.N. to provide armed forces by a special agreement.

In the end, Chapter VIII establishes the rules for the involvement of regional arrangements and agencies in the mission of maintaining peace and security.

The U.N. Charter does not define the term peacekeeping, however, it was mostly started to be used after the 1960s with the decolonization period and the spread of peacekeeping covered by the mass media.

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<sup>1</sup> See some examples: Dennis C. Jett, “*Why peacekeeping fails*”. (New York: Palgrave Macmillan, 2019).

Daniel Druckman, Paul C. Stern, Paul Diehl, A. Betts Fetherston, Robert Johansen, William Durch and Steven Ratner, *Evaluating Peacekeeping Missions*. Mershon International Studies Review, May, 1997, Vol. 41, No. 1 (May, 1997), pp. 151-165.

Virginia P. Fortana. “*Does Peacekeeping keep peace? International Intervention and the Duration of Peace after Civil War*”. International Studies Quarterly Vol. 48 (2004) pp. 269-292.

Robert Johansen. “*U.N. peacekeeping: How should we measure success.*” (Mershon International Studies Review, 1994) 38:307-10.

<sup>2</sup> Scott Hilton Derrah, “*Father or midwife? Lester B. Person and the origins of United Nations Peacekeeping*” (Master diss., University of New Brunswick, 1998) 17-18.

<sup>3</sup> U.N. Charter, 33, ¶ 1.

The reason for the lack of definition is due to the different actions that a mandate can charge to a peacekeeping mission.

The scope of the U.N. militaries is to help the host country to achieve a peace situation in a war and precarious condition. The mandate can assign different types of work to the peacekeepers and this is the reason why there isn't a common definition.

The U.N. webpage described it as follows: “Peacekeeping is one among a range of activities undertaken by the United Nations to maintain international peace and security throughout the world.”<sup>4</sup>

According to the Handbook of peacekeeping operations, “U.N. peacekeeping is based on the principle that an impartial presence on the ground can ease tensions between hostile parties and create space for political negotiations”.<sup>5</sup>

In addition, the handbook describes the different activities provided by the U.N. peacekeeping during a mandate. Due to the developing nature of disputes following the conclusion of the Cold War, Secretary General Boutros-Ghali began defining the different roles of the missions in 1992.<sup>6</sup>

A mission can have the scope to “conflict prevention”, meaning that through the diplomatic measures they tried to keep intra-state or inter-states tensions in a status that does not break out into a violent conflict. It entails early warning, information gathering and through examination of the factors causing the conflict.

Another role could be a “peace-making” meaning to involve measures to address ongoing conflicts and trying to bring the hostile parties to a negotiated agreement. Peacemakers can also involve governments, groups of states and regional organizations.

“Peace enforcement” incorporates a variety of coercive measures, including the military force. It needs the Security Council authorization to be implemented. It can be used to restore international peace and security, if decided by the Security Council, as a response to a threat to peace or an act of aggression. When appropriate the Council can include the regional organization and agencies in accordance to with the Charter, to enforce the action.

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<sup>4</sup> United Nation Peacekeeping, “Terminology”. Last access August 2022.  
<https://peacekeeping.un.org/en/terminology>.

<sup>5</sup> United Nation, Department of Peacekeeping Operations. *Handbook on United Nations Multidimensional Peacekeeping Operations*. (New York, 2003.) 10-11.

<sup>6</sup> United Nation, *An Agenda for Peace*, A/47/277-S/24111, (New York: United Nations, 1992).

“Peacebuilding” aims to reduce the risk of conflict escalation or reversion again in conflict. To do this, the peacebuilding process tries to strengthen national conflict management capacities at all levels. It is a process to establish a long-term peace and try to develop tools to maintain the peace and resolve the main issues that brought to the previous war situation.

And finally, “peacekeeping” defines the operations that support the ceasefire or peace agreement. The role of the U.N. should be an external actor who tries to maintain peace and stability during a war.

As described, several names have been given to different operations. However, the general term "peacekeeping" will be used in this thesis to describe the presence of military and civilians in the host state where a mandate is established by the Security Council.

According to the United Nations, peacekeeping is one of the most important tools provided by the agency to assist host countries in reaching a state of peace.

A peacekeeping mission should be guided by three main principles:

Consent of the parties; Impartiality; Non-use of force except in self-defence and defence of the mandate.

The consent of the parties is essential to not violate the host state’s sovereignty.

Impartiality is primary to maintain the credibility of the mission and the role of the UN.

Lastly, but most crucially, the non-use of force represents the essence of the scope of the UN, which had been created to resolve conflict rather than increase violence.<sup>7</sup>

It is essential to mention that in the beginning the third principle was ‘the use of force only in case of self-defence’. Due to the inability to prevent genocide in Rwanda and the massacre in Srebrenica, the third principle had changed into a ‘the use of force in defence of the mandate’.

With the evolution of the peacekeeping mission, those principles became difficult to follow due to the increasing failure of the UN mission. The use of force becomes a way in trying to resolve the incapability of the peacekeeping to complete the mandate.

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<sup>7</sup> Kai Michael Kenkel. *“Five generations of peace operations: from the “thin blue line” to the painting a country blue”*. Rev. Bras. Polít. Int. Vol. 56, N.1 (2013) pp. 122-143.

### 1.3 Main development during the decades

The U.N. was created after the end of World War II with the intent to ensure security and promote peace around the world. The purpose was to remove threats to peace through diplomacy rather than the use of force. The main idea was to avoid a war intra states.

The scope and principle of the United Nations are declared in the U.N. Charter.

During the Cold War, when the UN peacekeeping was first established, the Security Council's authority was constrained due to pressure from the superpowers, the US and URSS. For this reason, the first mission established in May 1948 had the scope of military observation and “lightly armed troops with primarily monitoring, reporting and confidence-building roles”.<sup>8</sup> The troops were sent to the Middle East to monitor the Armistice agreement between Israel and its Arab neighbours, the UN Truce Supervision Organization (UNTSO) and the UN Military Observer Group in India and Pakistan (UNMOGIP).

The first armed peacekeeping operation was the UN Emergency Force (UNEF I) in 1956 to address the Suez Crisis.

Many are the scholars who, during the time, are trying to establish some criteria to systematically divide the evolving process of the peacekeeping missions.

Dennis Jett, in his book, divided the phase of peacekeeping into eight different ones<sup>9</sup>. He underlines the importance of the political background as a key point for the cooperation or competition between states to implement peacekeeping mandates.

Diehl, Paul, in the book *Peace operation*<sup>10</sup>, uses another type of subdivision, more focus on the period after the cold war.

A further classification establishes the phases on the timing of the intervention in the armed conflict. The classification is determined by whether the intervention occurred before hostilities, during hostilities (split into low and high scale), or whether the forces arrived after the armed conflict.<sup>11</sup>

For the purpose of this thesis, it is not primarily essential the exact subdivision of the phases and the dissertation across it, however it is necessary to understand the evolution of the peacekeeping operation. It has been chosen the academic division of the five generations

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<sup>8</sup> UN peacekeeping mission. “Our History”. Last visited, August 2022. <https://peacekeeping.un.org/>

<sup>9</sup> Dennis C. Jett, “*Why peacekeeping fails*”. (New York: Palgrave Macmillan, 2019).

<sup>10</sup> Diehl Paul, “*Peace Operation*” (Malden, MA: Polity Press, 2008).

<sup>11</sup> Edward Thurman “*Shaping an army for peace, crisis, and war*”. *Military Review* (April 1992) 27-35.

peacekeeping operation, provided by Kai Michael Kenkel<sup>12</sup>. This subdivision gives the possibility to frame the moment in which the report of human rights violations started to be taken into consideration.

The generations are divided by the author based on three main factors: (1) the level of the force used by the military in the operations; (2) the type and the breadth of its civilian pillar's responsibilities; and (3) the increase of collaboration with regional organizations.

The key element of the first generation is the passive role of the peacekeeping mission. As it is described above, few missions were launched due to the cold war background. During this period the peacekeeping were blamed to paralyze the conflict but not to bring a real conclusion.

The second generation, started with the end of the Cold War and had the role in changing the purpose of the mandate. The purpose was in not just to freeze the conflict but to provide real help in the resolution. As some authors elaborated<sup>13</sup>, this period was characterized by a rise of a new type of war, there was not anymore interstate conflict as the World War but more in-state war.

The modulations of wars were “not a peaceful economic competition between trading blocs, but of warfare between ethnic and religious groups”<sup>14</sup>. During those times, there was an increase in the interaction between military and citizens, the involvement of numerous players in the battles, including the peacekeepers. Because the UN charter was built on the experience of the World Wars, the large number of participants made it more difficult for the UN to provide support.

Properly for this difficult background, the main failure of PKOs occurred in this period.

The three main failures were: the incapability for the UN to prevent and limit the genocide in Rwanda in 1994; The inefficiency in bringing a political compromise in Somalia; and the failure to protect civilians in Bosnia during the Srebrenica massacre.

The latter will be analysed in the following chapter as an example of the failure for the national court to hold the UN responsible for human rights violations.

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<sup>12</sup> Kai Michael Kenkel. “Five generations of peace operations: from the “thin blue line” to the painting a country blue”. Rev. Bras. Polit. Int. Vol. 56, N.1 (2013) pp. 122-143.

<sup>13</sup> Kaldor Mary. “New and old wars”. (Stanford: Stanford University Press, 2007).

<sup>14</sup> Dennis C. Jett, “Why peacekeeping fails”. (New York: Palgrave Macmillan, 2019).

The third generation is characterized by the change of a more peace operation or peace enforcement missions. The failure of peacekeeping in the '90s led to a new visitation of the role of the UN military in the conflicts. For example, in the case of UNAMIR (Rwanda mission) the militaries were not allowed to use force because they had to respect the Chapter VI of the Charter, 'the use of force only in case of self-defence. The maintenance of impartiality led to a non-action that leave space for a genocide.

Those episodes make the third generations a dilemma about the use of force. In August 2000, the Report of the Panel on United Nation Peace operation - also called the Brahimi report - was written due to this episode, with the idea to rethink the role of peacekeeping. "Stressing the necessity for urgent improvement in the ways the United Nations addresses conflict"<sup>15</sup>. The main change implemented that the use of force is allowed not only in self-defence but also in defence of the mandate<sup>16</sup>. The report claims 69 recommendations focus on the change of strategic direction, decision-making process, rapid deployment and operational planning and support.<sup>17</sup> "Its recommendations formed the basis for subsequent changes in the legal quality of PKO mandates and the adequacy of military equipment with the declared ambitions"<sup>18</sup>.

Based on the legal change, the military is allowed to use force beyond self-defence, but "without transforming UN forces into fighting force parties to the conflict"<sup>19</sup>.

The rise of human rights protection created the concept of "responsibility to protect" (R2P). The "2005 World Summit outcome" resumed the resolutions adopted by the member states in take responsibility to protect the populations "from genocide, war crimes, ethnic cleansing and crimes against humanity"<sup>20</sup>.

The symbolic intervention after the process of innovation, in the third generation with a humanitarian motivation, was the conflict in Kosovo 1999. In this operation, the key point was that most of the troops were sent by regional organizations or coalitions authorized by

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<sup>15</sup> United Nation. "Report of the Panel on United Nations Peace operations". A/55/305. S/2000/809. (United Nations: 2000)

<sup>16</sup> UN Peacekeeping PDT Standards, "Core Pre-Deployment Training Materials", (1st ed. 2009).

<sup>17</sup> United Nation. "Report of the Panel on United Nations Peace operations". A/55/305. S/2000/809. (United Nations: 2000).

<sup>18</sup> Medicines sans frontières. "The practical guide to Humanitarian law". <https://guide-humanitarian-law.org/content/article/3/peacekeeping/> Last access, August 2022.

<sup>19</sup> Ibid.

<sup>20</sup> UN General Assembly. "World Summit Outcome". A/RES/60/1(New York: United Nations, 2005).

Chapter VIII of the Charter. “These missions often possess a temporally limited mandate aimed at restoring a peaceful context in which the UN can carry out its civilian task”.<sup>21</sup>

The fourth generation can be considered in a more peace operation framework. This is characterized by the increase of opportunities to use the force and improve the civilian tasks role. The peacebuilding term was coined with the end of the cold war but it was implemented farther.

The complexity of the peacebuilding operation during those times paved the way for the involvement of regional organizations like NATO, OSCE, and UN special agencies and NGOs<sup>22</sup>. Coordinating all of those multiple actors was challenging during those times, hence the UN established the Capstone Doctrine to handle the problem. This document refers to the principles and guidelines implemented to reform the process of peace operation, ensuring to the personnel deployed a clear and effective guidance.<sup>23</sup>

The last one, the fifth generation, is considered a hybrid mission. The shift of this generation is not only the involvement of different actors but also the commanders of the troops are also managed by the regional organizations. For this reason, those missions are called hybrid ones because both UN and regional organizations take part in the Peace operations.

An important aspect analysis by Kai Michael Kenkel is the shift of focus by Western powers due to the 11/9 and the increase of troops coming from the global south. The terroristic attacks led to most of the American and Canadian troops being sent to Afghanistan. Instead of focusing on peacekeeping missions, the war on terror directed western forces toward the Middle East conflict. This change led to a more contribution of states coming from India, Bangladesh, and Nepal.

All those innovations create a grey zone for the law application which increases the difficulties to find accountability. The focus of this thesis is to discuss this incapability of law application in the conflict situation where the UN is involved. Most of all, the violation of human rights by those who should protect the civilians.

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<sup>21</sup> Kai Michael Kenkel. “Five generations of peace operations: from the “thin blue line” to the painting a country blue”. Rev. Bras. Polit. Int. Vol. 56, N.1 (2013) pp. 122-143.

<sup>22</sup> Ibid, p.134.

<sup>23</sup> United Nations Peace Operations. “Principle and guideline”. (New York: United Nations, 2008).



#### 1.4 Structure of the peacekeeping missions

The mandate is established by the Security Council and the Secretary-General is responsible for the implementation of the mission.

The Capstone doctrine provides clear points to understand if the Security Council could take in consideration the deployment of a peacekeeping operation. One of the options can be the possibility that an ongoing conflict affects the international security and peace; or when a cease-fire exists and the parties are inclined to reach a political settlement.<sup>24</sup>

Before starting a U.N. mission, there is an 'initial consultation' process in which different stakeholders take part. This meeting included all the U.N. actors, the potential host government, the parties on the ground, the contributing member states, regional or other intergovernmental organizations.

In this meeting, the UN Secretary-General tries to make an overview on all the possibilities for managing the conflict resolutions.

It is common that not all the parties approve for the UN involvement in a particular conflict situation. As a result, the discussion can last long and some parties claim more than others in the agreement of the UN intervention.

The technical assessment mission (TAM) begins as soon as the meeting comes to a conclusion in favour of intervention. If security permits, the Secretariat establishes an assessment mission and pays attention to all relevant factors, from political to safety and any dangers to personnel.

Based on the outcome of this investigation, the UN Secretary-General develops a report for the Security Council. This report explains the proper size of the mission including financial estimation.<sup>25</sup>

The Security Council, after taking into account the report provided by the evaluation assessment, authorizes the operation's development with the size and mandate.

To be approved, the mandate needs 15 votes in favour and it is subject to the veto by the five permanent members. The budget and resources for the mission have to be approved by the General Assembly.

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<sup>24</sup> Ibid. p. 27

<sup>25</sup> Ibid. p.48

When the mission is established, the Secretary-General nominates a senior official to head the operation. In planning the mission, the Secretary-General establishes a Special Representatives of the Secretary General (SRSG) who according to some authors is an important role in post conflict peacebuilding<sup>26</sup>. He or She works in complicated mission structures and the role is to be a mediator during all the mandate. The SRSG keeps informed the headquarters with the main issues.

Another important tool in this structure is the Department of Peacekeeping operation (DPKO) which offers support with fact funding of the mission. It was established in 1992, “ It serves as the operational arm of the Secretary-General for all United Nations field operations, in particular the management and direction of peace-keeping operations”.<sup>27</sup>

During this phase of planning there is also the establishment of a Headquarters-based system used by working groups or integrated mission task forces. “Headquarters and the mission have complementary roles and comparative strengths in developing the political roadmap for the mission and managing its resources.”<sup>28</sup>

The SRSG and DPKO usually work at the same level. The SRSG summarizes all the key facts of the mission to the Under-Secretary-General for Peacekeeping operation so the Headquarters are always informed of the evolution of the operation, from the achievement to the obstacles. The DPKO has the role to mediate the relationship between the different offices and departments at Headquarters.

It is necessary to emphasize that all the facts, about the operation, are reported regularly to the Security Council by the Secretary-General.

The Security Council has the responsibility to evaluate the mission, modifying the mandate if necessary, until its conclusion.<sup>29</sup>

As it is described above, the evolving process of peacekeeping operations increases the tasks assumed by militaries. Consequently, the mandates change based on the different degrees of tasks necessary for different situations.

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<sup>26</sup> Timothy D. Sisk. “*The SRSGs and the management of civil wars*”. Riv. Global Governance, Vol. 16, No. 2 (Apr.–June 2010), pp. 237-242.

<sup>27</sup> Andrzej T. Abraszewski, Richard V. Hennes, Boris P. Krasulin, Khalil Issa Othman. “*Military Component of United Nations Peacekeeping operation*”. JIU/REP/95/11 (Geneva: United Nation, 1995).

<sup>28</sup> United Nations. “*Handbook on United Nations Multidimensional Peacekeeping Operations*”. (New York: Department of Peacekeeping operations, 2003).

<sup>29</sup> Ibid.

“Security Council mandates differ from situation to situation, depending on the nature of the conflict and the specific challenges it presents”.<sup>30</sup>

The mandate follows the cross-cutting and thematic assignments that are constant in all peacekeeping operations. Those are based on the Security Council Resolution 1325 “On women, peace and security”<sup>31</sup>, the Resolution 1612 “On child and armed conflict”<sup>32</sup> and Resolution 1674 on “The protection of civilians in armed conflict”<sup>33</sup>. The third chapter will give a critical analysis of these documents, which according to some authors, fail to propose an innovative, non-western and active participating perspective of the local communities assisted by the militaries.

A U.N. mission involves a variety of participants, including volunteers, police, military personnel, and civilians. This dissertation focuses on the military component because sources realize that sexual harassment and the so called ‘black market’ where the UN personnel was found involved “occurs more frequently among military than civilian staff”.<sup>34</sup>

### 1.5 Explanation of states contribute in UN operations

When a mandate is decided, the initiative of member states to participate with their own troops is based on a voluntary decision.

The focus here is analysis of why states decide to join a mission. The literature proposes many explanations for this topic from theoretical to practical ones.

According to the philosophical approach, states have the responsibility to intervene to resolve disputes if this can affect the international community. With the failure in the ‘90s, the international community, in the 2005 World summit, established the protocol on the responsibility to protect (R2P). The international community has the responsibility to intervene if “national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.<sup>35</sup>

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<sup>30</sup> United Nations Peacekeeping operations. *“Principles and guidelines”*, (New York: Department of peacekeeping operations, 2008).

<sup>31</sup> UN Security Council resolution 1325 (2000) on women, peace and security.

<sup>32</sup> UN Security Council resolution 1612 (2005) on children and armed conflict.

<sup>33</sup> UN Security Council resolution 1674 (2006) on the protection of civilians in armed conflict.

<sup>34</sup> Faith K. Bouayad-Agha, Boris P. Krasulin, Khalil I. Othman. *“Staffing of the United Nations peacekeeping and related missions (civilian component)”*. JIU/REP/93/6. (Geneva: United Nations, 1993). p.25.

<sup>35</sup> United Nations. “2005 World Summit Outcome”. A/RES/60/1. (New York: General Assembly, 2005).

If we turn to the practical reason we see a different range of possibilities. Alex J. Bellamy and Paul D. Williams divided the academic dissertation into five clusters of arguments<sup>36</sup>.

A state can decide to participate based on political reasons. This means that authors identify the possibility of a state improving international prestige with the participation in the peacekeeping mission, most of all from the small states. In addition, active participation can help in sitting at the table of the decision process of a particular mission. In doing so a state is more aware of the development and decision process of a conflict.

Another reason can be budget recompense. The salary earned by military in the UN missions sometimes can be more than for serving its own state. This can be seen in the Bangladesh case, explained below, where it makes a comparison between national and UN salaries. The estimation shows that serving the UNPKOs is around \$1,100 the military, differently for serving the national state the salary is around \$100<sup>37</sup>.

Participating in the UN mission can benefit governments as well as the individual. “A state might use UN compensation payments to support the national budget”.<sup>38</sup>

A state can serve the UN for security reasons, meaning that a state is more inclined to participate when its own security is in danger. The perception of danger is directly proportional to active participation in the UN peacekeeping operation.

In addition, geographical closeness can increase the possibility of taking part in the mission. It is noted that the neighbours of a conflict are more inclined to give a contribution rather than the more distant state.

Further explanation can be for bureaucratic or disciplinary reasons.

An interesting motivation is provided by the idea of a “global good Samaritans” in which the participation in the UNPKOs is due to empathy for others' suffering.<sup>39</sup> The willingness to demonstrate to be a good citizen can become an additional reason. One of the theories said that participation creates a good impression of the international community. In assisting a conflict situation, maybe a state can wash from high violations of human rights. A case is

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<sup>36</sup> Alex J. Bellamy and Paul D. Williams. “*Why States Contribute United Nations Peacekeepers*”. (International Peace Institute, 2012).

<sup>37</sup> Asian Centre for Human Rights. “*Bangladesh: sending death squads to keep the UN's Peace*.” (New Delhi: Asian Centre for human rights, June 2014).

<sup>38</sup> Alex J. Bellamy and Paul D. Williams. “*Why States Contribute United Nations Peacekeepers*”. (International Peace Institute, 2012).

<sup>39</sup> *Ibid.*

See also: Alison Brysk, “*Global Good Samaritans: Human Rights as Foreign Policy*” (Oxford: Oxford University Press, 2009).

provided by the Bangladesh police who violate human rights and participate in tPeacekeeping missions. Peacekeeping can be a cover for making a so-called ‘human right washing’.<sup>40</sup>

In sum, the dilemma of the literature deals if the interest is for the community or for self-interest. This question is well addressed in the article of Laura Neack. The author - with an analysis of eighteen peacekeeping operations between the beginning and the end of the XX century – proves how states do it more for self-interest rather than community.<sup>41</sup>

Even if it is not the purpose of this thesis, it is important to show the different reasons that lead to a state with troops’ contribution. In addition, we will address how human rights violations and the involvement of states accountability can affect the decision of states in maintaining the troops for the UN.

## 1.6 The training of peacekeepers

The UN doesn’t dispose of military personnel. The so-called Blue Helmet are first of all members of their national armies and secondly, they work under the command and control of the UN. Only when the Security Council approves a new mandate, does the UN headquarters coordinate with member states to collect, identify and deploy the militaries for the mission.

This procedure needs time, usually more than six months.<sup>42</sup>

During this time, the militaries should be trained to operate in a vulnerable context.

“Adequate preparation is a prerequisite for implementing the complex mandates of the United Nations”.<sup>43</sup>

According to a research of the failure of Canadian troops in Somalia under peacekeeping operation, before 1992 there was not a general and coordinated training for troops. This lack

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<sup>40</sup> This term doesn’t exist in the literature, however here it refers to the idea of greenwashing or sport washing. This happens when states or institutions try to hide bad behaviour. Greenwashing, for example, is used by big companies to create the illusion that they are doing something good for the environment. This term is used here because states participate in UN peacekeeping to give an illusion to be human rights promoters when maybe nothing is changed in their institutions.

<sup>41</sup> Laura Neack. “UN peace-keeping: In the Interest of Community or self?”. *Journal of Peace Research*, Vol. 32, No. 2 (May, 1995), pp. 181-196.

<sup>42</sup> UN military. Available here: <https://peacekeeping.un.org/en/military>

<sup>43</sup> Lotta Hagman. Peacekeeping pre-deployment training: a shared commitment and responsibility. The Coespu magazine nr. 1-2019.

describes how there was a gap in a general doctrine and an “absence on a performance evaluation mechanisms respecting the training of units deploying on peace operations”<sup>44</sup>.

Ideally, the training should provide the tools to be able to face a challenges in the conflict situation. The Peacekeepers should not be considered as simple militaries, theoretically, they are those who arrive in a conflict situation to help and support the civilians.

“While armed forces of a State operate under national doctrine and guiding principles, when they serve as part of a UN peacekeeping operation there are certain basic international principles that govern their actions.”<sup>45</sup>

Haass and Ansorg discover that peace operations with well-trained and well-equipped soldiers from advanced militaries are more likely to prevent violence.<sup>46</sup>

For this reason, they should be well trained however, as some research shows, the training is not as well formed as it should be.

The DPKO provided three phases of training, the first one, the ‘Pre-deployment phase’, is provided by the contributing countries, usually scheduled in two weeks.

This decision was taken in the UN General Assembly Resolution 49/37 in which the UN recognized that the training of the personnel is the responsibility of Member states and the UN provided all the materials in “standardized and cost-effective manner in accordance with agreed common standards, skills, practices and procedures”<sup>47</sup>.

The standards are listed in the Core Pre-Deployment Training Materials (CPTM), resuming the basic knowledge needed by the UN personnel, from militaries to volunteers. These materials have to be used in the Pre-deployment training by Member states because they share principles developed in cross-cutting themes. The themes range from conduct standards, sexual exploitation, abuse, the respect of human rights to environmental protection.<sup>48</sup>

The second phase is the ‘Induction training’ during the early moment of the deployment.

And the third one is on-going training where the UN continues to furnish the training during the mission with more focus on the specific context.<sup>49</sup>

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<sup>44</sup> “Dishonoured Legacy. The Lessons of the Somalia affair. Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia.” (Ottawa, Canadian government publishing, 1997).

<sup>45</sup> United Nations. “*Handbook on United Nations Multidimensional Peacekeeping Operations*”. (New York: Department of Peacekeeping operations. 2003).

<sup>46</sup> Haass, Felix, and Nadine Ansorg. 2018. “*Better Peacekeepers, Better Protection? Troop Quality of United Nations Peace Operations and Violence against Civilians.*” *Journal of Peace Research* 55 (6): 742-58.

<sup>47</sup> UN General Assembly Resolution. A/RES/49/37 (New York, 1995) p. 9

<sup>48</sup> UN Guidance for Member States. DPKO/DFS CPTM Version 2017.

<sup>49</sup> United Nations. “*Member State Guidance*” (UN DPKO/DFS CPTM Version 2017). Available here: <https://research.un.org/revisedcptm2017>.

An issue raised, throughout the academics, is the inadequate and limited duration of the pre-training provided by the member states.

In a report about the training of UN personnel<sup>50</sup>, the author identifies the time constraint in the training course for the militaries. The main problem is that too many arguments are added to a short time training. This general overview gives a superficial explanation to all the arguments, without providing a solid support to the troops. The possible consequence is that too much power is given to people without equipped knowledge.

The report continues by claiming that the short duration, according to the professionals, is due to the limited time for them to teach.

Differently, it is explained that this lack of proper preparation is caused by a restricted financial budget. Some other resources identified that an issue concerns the rapidity of the elaboration of a mandate and consequently the time reduction for the training. This situation happens when a crisis gets worse quickly.<sup>51</sup>

Without a proper investment in this essential training, the militaries are not well-formed to provide the necessary attitudes required to execute their duties. Some authors notice that “for good reasons, when a crisis erupts the priority of getting boots on the ground often overrules quality assurance concerns”<sup>52</sup>. However, the underestimation of the training and the recruitment of the peacekeeper in favour of rapid deployment, can have huge consequences in long-term stay. It could be better if the training of the peacekeeper is done even if there is not an imminent mission but the training can be provided as a preventive and forward-looking of the organization.

If a peacekeeper violates international humanitarian law, they are subjected to their own national state military justice. This topic will be developed further in the next chapter, however it is important to underline that in the handbook of peacekeeping it is clearly described that “All peacekeeping operation personnel must respect local laws and customs and maintain the highest standards of integrity in their personal conduct”.<sup>53</sup>

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<sup>50</sup> Anne Flaspeler. “*Peacekeeping Training: Torn between complexity and time*”. (United Nations University, 2017). Available here: <https://www.merit.unu.edu>.

<sup>51</sup> Ross Allen, Frederik Rosen and Kristoffer Tarp. “Preparing for protection of civilians in United nations peacekeeping operations”. (Danish Institute for International Studies. Copenhagen: 2016.).

<sup>52</sup> Ibid.

<sup>53</sup> United Nations. “*Handbook on United Nations Multidimensional Peacekeeping Operations*”. (New York: Department of Peacekeeping operations. 2003).

In addition, the military has a code of conduct that provides the behaviour that a peacekeeper should always keep when s/he is wearing the UN military uniform. “Those that breach the Code must be duly disciplined by their national authorities, including the imposition of legal sanctions, when appropriate.”<sup>54</sup>

The further chapter analyses the immunities of militaries and the difficulties in providing accountability for the misconduct of militaries.

However, to frame the duty that a military should follow, it is proposed the two main rules relate to this topic. Indeed, the Ten rules code for personal can be found:

Rule 3 “Treat the inhabitants of the host country with respect, courtesy and consideration. You are there as a guest to help them and in so doing will be welcomed with admiration. Neither solicit or accept any material reward, honour or gift.”<sup>55</sup>

Rule 4: “Do not indulge in immoral acts of sexual, physical or psychic abuse or exploitation of the local population or UN staff, especially women and children”<sup>56</sup>.

It is challenging to find comprehensive studies on the value of peacekeeper training and the need for timely behaviour assessments prior to deploying military forces.

This concern is probably due to the new aspect of the problem. This study gap may be the result of the emphasis being placed more on state willingness to provide militaries than on the UN's role as the manager of peacekeeper recruitment.

Even with the difficulties in finding theoretical research about this topic, recently some research emerged in evaluating the training through a critical perspective.

An example is, Ufuk Basar and Unsal Sigri who analyse the challenges of military commanders through interviews with fourteen officers who had different experiences in the UN missions<sup>57</sup>. The results show a lack of competence in foreign languages and military terminology. A lack of cultural awareness, the difficulties in coordinating different troops which come from different backgrounds. The delicate situation with the addition that any of the troops is in a familiar environment increases the complication of coordination's.

From this research, it appears there are existing different training patterns given to different states. One commander explains his personal opinion as follows:

*“I believe that it will be helpful, if officers have cultural awareness training, covering knowledge about military traditions, religions, national customs, daily habits,*

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<sup>54</sup> Ibid.

<sup>55</sup> United Nation. “Ten rules code of personal conduct for blue helmets”. (New York, January 1999).

<sup>56</sup> Ibid.

<sup>57</sup> Unsal Sigri, Ufuk Basar. “Peacekeeping operations management. An analysis of challenges, changes in command action and training needs”. Journal of Defence Resources Management. Vol 6, Issue 2 (11) 2015.



*abbreviations or military jargons of each participating nation along with the host nation prior to putting boots on the ground.”<sup>58</sup>*

This report addresses the problem of the lack of military and cultural knowledge of the peacekeepers. It is not about the human rights violation however it is important to show direct feedback from commanders that had experience in the field.

A survey conducted by the Danish institute tried to address the problem of peacekeeping training. The results are done thanks to the respondents who represent the third of all deployed troops of the UN. The main discovers, important for this dissertation, are in the response of the participants who claim a “more specialized and context-specific training”; A gap in the evaluation of the outcome of the training and the “the lack of clarity on the operational meaning and practical implementation of the Protection of Civilians mandates”.<sup>59</sup> In spite of the innovation implemented by the UN, it is long the path creating a well-structured formation of peacekeepers.

Even though there are now plenty of papers available for pre-deployment training, including various UN reports and rules, the survey highlights the lack of attention paid to performance evaluation after the training.<sup>60</sup>

What's lacking is the member states' successful implementation, and from the side of the UN is missing the evaluation and results of the knowledge the training has supplied.

All this dissertation about the training of a peacekeeper mission is important in the way how much the UN and the sanding states do their best in providing formed and equipped militaries. The latter should not only be ready to combat, however the training should also include the cultural and professional figures that they have to respect.

## 1.7 Selection of militaries

The screening of militaries is an important moment to prevent possible human rights violations and certify a high standard of conduct by peacekeepers. The consequence of avoiding a real selection of the personnel in the peacekeeping operation allows everyone to

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<sup>58</sup> Ibid. p. 17.

<sup>59</sup> Ross Allen, Frederik Rosen and Kristoffer Tarp. “*Preparing for protection of civilians in United nations peacekeeping operations*”. (Danish Institute for International Studies. Copenhagen: 2016).

<sup>60</sup> Some examples are: United Nations. “*Policy training for all United nation peacekeeping personnel*”. Department of peace operations (New York: 2010).  
United Nations. “*Policy. Human rights screening of United Nations Personnel*”. (New York: 2012).

participate in spite of their possible precedents in human rights violations. This issue is well developed in the report analysed by the Asian Centre for Human Rights<sup>61</sup>.

The article provided that people involved in extrajudicial execution and other inhuman treatments were selected for UN missions. The focus is on the Rapid action battalion (RAB), created in 2004 as a hybrid body with different units of personnel assisting the Bangladesh government.

Due to their illegal treatments to the prisoners and the violation of indigenous community's rights, "they have been described as death squads".<sup>62</sup>

Non-governmental organizations, such as Amnesty International, made investigations into the police's inhuman treatment of victims in jail. This behaviour included "beating with rifle butts, iron rods, bamboo sticks, hanging by the hands from the ceiling, rape, 'water treatment' and others"<sup>63</sup> degrading and unacceptable behaviour.

Due to government corruption and a lack of rigorous oversight by the UN, this group of personnel is permitted to be chosen for a UN peacekeeping mission.

Indeed, the Bangladesh institutions, in spite of the implementation of the "Convention against torture and other Cruel, Inhuman or degrading treatment or punishment"<sup>64</sup> and the UN zero tolerance, don't change the attitude in the evaluation and deployment of personnel. The evidence in the report explains how no real change had occurred.

The conclusion of the report underlines how there is no evidence in the possibility that the same people who took part in the inhuman treatment of prisoners were selected for UN peacekeeping. However, the difficulties in conducting independent investigations imply high chance that human rights violators are able to be selected in representing the UN.

An example is Md. Abdul Aziz Sarkar "as the Chief of the RAB and Additional Director General Md. Mahbubul Alam Mollah has command responsibility for all gross violations that their subordinates have committed. The director general had served in UN missions in Yugoslavia and Kosovo while his deputy served in the Iraq-Kuwait mission".<sup>65</sup>

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<sup>61</sup> "Bangladesh: sending death squads to keep the UN's Peace." (New Delhi: Asian Centre for human rights, June 2014).

<sup>62</sup> Ibid.

<sup>63</sup> Amnesty International. "Bangladesh: Endemic Torture Since Independence", (Amnesty International, November 2000). Index Number: ASA 13/008/2000.

<sup>64</sup> The convention was ratified in 1998, and the article was implemented in The Constitution of the People's Republic of Bangladesh (Act no. of 1972), in the article 35 comma 5.

<sup>65</sup> Bangladesh: sending death squads to keep the UN's Peace." (New Delhi: Asian Centre for human rights, June 2014).

In a letter sent to the UN Headquarters, different NGOs claim that the UN policy on HR screening is not being applied to the Bangladesh militaries. They underline how individuals serving the RAB were sent to the UN missions, in spite of the evidence of the high violations of human rights by the RAB. The NGOs ask to ban all the personnel from RAB to apply for UN missions.

The letter affirms that these issues affect the reputation of the UN and, most of all, it raises the possibility of human rights violations committed during a UN mission.<sup>66</sup>

A report dated 1993 explains how the human resources Secretariat at that time reached its limit. The rapid increase of personnel, due to the end of the cold war, created difficult management from the secretariat unit. The number of missions was 26 at the same time. The overworking of the secretariat department showed the lack of preparation by the UN. In addition, the '90s were the period in which the first claim against the violation of human rights came to light.<sup>67</sup>

To face this challenge, the UN in 2012 implemented a screening policy for Peacekeeping personnel.

“All United Nations personnel – regardless of status and the procedure by which they were selected, appointed, recruited, deployed or contracted – have a responsibility to ensure that human rights are promoted, respected, protected and advanced through, within and by their own organizational entity/unit.”<sup>68</sup>

The document shows the importance of the reputation of the UN, as an active presence in conflict territories, assured by high conduct from all the personnel. This can be guaranteed by the selection of the militias from the sending states before nominating them for serving with a peacekeeper uniform. The request is that the individuals respect “the highest standards of integrity, including respect and commitment to human rights”.<sup>69</sup>

The policy reform introduced a working group with different United Nations stakeholders involved, with the intent to monitor the implementation of this policy by member states.

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<sup>66</sup>An open letter to UN headquarters from different NGOs. “Human rights screening of Bangladesh nationals”. (November,8 2021).

<sup>67</sup> Faith K. Bouayad-Agha. Boris P. Krasulin. Khalil I. “*Othman. Staffing of the United nations peacekeeping and related missions (civilian component)*”. JIU/REP/93/6. (Geneva, United Nations. 1993).

<sup>68</sup> United Nations Policy. “*Human rights screening of United Nations Personnel*”. (New York: United Nations, 2012)

<sup>69</sup> Ibid. p.3 section 4.4.

Two are the weaknesses of this document: The first is the selection procedure carried out by the contributing nations and the UN, nonetheless by certain independent organizations. Indeed, the member state should create a process of selection which is also a “self-attestation for individuals” where the candidate declares that he/she had not committed any misconduct during his/her career. The candidates who lie about human right violation had to be repatriated by his/her Member State.

There is no evidence or report which describes the selection conducted by the Secretariat. In this document, the only mention is about a database as a procedure of selection. The UN institutes an information exchange mechanism, in which the individual conduct is reported in a database where the secretariat can conduct a screening procedure.

The Brahimi report, in recommendation 11, declares that the secretariat should have an Internet-based roster for the pre-selection of civilian candidates<sup>70</sup>.

No further information has been found about the criteria and deep analysis of this selection. doesn't help in declaring its effectiveness.

The difficulty in finding a methodology for how the secretariat conducts the test doesn't help in declaring its effectiveness.

The second weakness lies in the missing a scheme or a criterion on how to select the personnel. Although the paper provides a theoretical account of upholding moral principles and human rights, but no practical plan is offered for doing it.

These two gaps create a failure in addressing the problem. The outcome is shown in the Bangladesh example discussed previously, in which in spite of the change and the promises by the politicians, no real change occurred. The selection of personnel is still done by the government through a corruption system.

This doesn't say that all the member states are not able to produce a coherent and authentic selection, however this document and its analysis had been done to show the difficulties in managing a large number of personnel such as the peacekeepers.

If we make a brief count, currently there are twelve active operations. The total number of personnel now involved in a UN mission is around eighty thousand people. In some bases,

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<sup>70</sup> United Nation. “*Report of the Panel on United Nations Peace operations*”. A/55/305. S/2000/809. (United Nations: 2000).

the personnel amount to more than ten thousand uniforms, others around one hundred and the most contributing states are Bangladesh, Pakistan, Indonesia and South Africa.<sup>71</sup>

In addition, the personnel are constantly changing and this increases the number of people involved in peacekeeping missions.

The urgent need for militaries since the mandate is signed doesn't meticulously help in the selection.

### 1.8 Some considerations

We tried to address peacekeeping in a multi-level approach meaning that we started from the UN documents, how the mandate started to the military deployment.

The evolving process of UNPKOs and the political background generate many recommendations by the UN. The main issue identified is the difficulty in screening the personnel and the member states' supervision of this process.

The need for pre-training done by member states is necessary and it is important to analyse the effect produced. However, this cannot be seen as a “panacea that will resolve all protection challenges”<sup>72</sup>.

It is necessary to stress the topic of training and the conduct of the militaries because their first responsibility is to protect the civilians. It is known that compared to the number of people involved in peacekeeping the ones who commit misconduct are few. However, this has not to be taken as a justification by the UN for not addressing the problem.

As we will see, the states can repatriate their militaries, however, we try to identify how many of the denunciations after the repatriation have been taken into consideration.

In the next chapters we analyse how the peacekeeper violated human rights.

Further, we will explore the legislation which should cover this misconduct. The immunities and the main gaps created during the years due to the negligence of the states and the difficulties in finding accountability.

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<sup>71</sup> In the MONUSCO mission in Congo the amount of blue helmets from militaries to volunteers civilians amounted to 17.783 people. where the first contributing states is Pakistan followed by India and Bangladesh. Information available here: <https://peacekeeping.un.org/en/mission/monusco>. to have further information. For the UNMISS mission in South Sudan the amount of personnel is quite the same as the Congo mission and the most contributing states are Rwanda, India, Nepal and Bangladesh. Information available here: <https://peacekeeping.un.org/en/mission/unmiss>.

<sup>72</sup> Ross Allen, Frederik Rosen and Kristoffer Tarp. “*Preparing for protection of civilians in United Nations peacekeeping operations*”. (Copenhagen: Danish Institute for International Studies. 2016).



## Chapter II - The United Nation as Human Right violator.

### 2.1 Introduction to the Chapter

The main purpose of this chapter is to report the episodes of sex exploitation by peacekeepers.

It will attempt to clarify what means the violation of human rights by UN personnel.

It will explore many different breach of international humanitarian law and the violation of fundamental rights during the UN missions.

After summarizing the main collective failure in protecting civilians, the chapter will focus on the individual misconduct of peacekeepers.

Sex exploitation and abuse by peacekeepers had been widely documented during the time. MINUSTAH, the Haiti UN mission and AMISOM, the regional deployment of militaries under UN command in Somalia, are the two cases discussed here. It will discuss several interviews that demonstrated how regularly militaries violate human rights.

The first cases of sexual abuse, rape, torture and violence by peacekeepers started to be documented in Cambodia and Somalia in the beginning of the 90s<sup>73</sup>.

The inquiry that revealed the horrifying human rights violations to the local populations was intensified with the start of the new century as a result of numerous scandals that were published in the news.

Many missions have received accusations of sexual exploitation by peacekeepers and aid workers. Haiti<sup>74</sup>, Somalia<sup>75</sup>, Democratic Republic of Congo<sup>76</sup> and Liberia<sup>77</sup> are only the most documented.

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<sup>73</sup> Vanessa Kent. Protecting civilians from UN peacekeepers and humanitarian aid workers: sexual exploitation and abuse. edited by Chiyli Aoi et al. "Unintended consequences of peacekeeping operation." (United Nations University, 2007).

<sup>74</sup> An example is: Luissa Vahedi, Heather Stuart, Stéphanie Etienne, Sabine Lee and Susan A. Bartels. "Gender-Stratified Analysis of Haitian Perceptions Related to Sexual Abuse and Exploitation Perpetrated by UN Peacekeepers during MINUSTAH". *Sexes*, vol. 2, no. (Switzerland, June 2021), pp. 216-243.

<sup>75</sup> Richard J. Wilson. Emily S. Hurviz. *Human Rights Violations by Peacekeeping forces in Somalia*. Human rights brief. Volume 21, issue 2. (2014) pp. 2-8.  
Human Right Watch. 8 September, 2014. "The Power These Men Have Over Us" *Sexual Exploitation and Abuse by African Union Forces in Somalia*".

<sup>76</sup> K Holt and S Hughes. "Sex and Death in the Heart of Africa, Independent". (May, 2004).  
Human Right Watch. February 28, 2005. MONUC: A Case for Peacekeeping Reform.

<sup>77</sup> V. Kent, 'Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse'. in C. Aoi, C. de Coning and R. Thakur (eds.), *Unintended Consequences of Peacekeeping Operations* (New York: United Nations University Press, 2007) 44 at 58.

The testimonials presented here are all from secondary sources, which means that they were taken from articles that documented the events through interviews.

The purpose is to demonstrate how the militaries abuse their power for their interests rather than to respect the mission and represent the UN.

It will discuss the problem of under reported violations by victims due to fear of repercussion and the obstacles created by the social context.

We will see how the lack of denunciation led to a difficult and more long path in fighting this kind of behaviour. The fear of repercussion from the victims and the culture of silence from the military are the main issues discussed here.

Furthermore, the intent is not to just limit the presentation of the events, rather the scope is to give a general explanation of this unacceptable behaviour conducted by the militaries. For this, we will try to address the problem through the lens of gender studies. The military's masculinities will be considered as a key element to understanding the reason why the military feels free to act in this manner.

## 2.2 Violation of Human Rights by the UN.

Since the turn of the millennium, reports of sexual exploitation by peacekeepers have been reported. This delay suggests that the UN started to address the problem only at that time. There is no doubt that sex abuse by militaries previously existed, however, from that point forward, numerous researchers began to investigate the issue.

All these investigations raise awareness of the gross violation of human rights by peacekeepers. This development emphasises the importance of “guard also the guardian”<sup>78</sup>, to reduce the idealistic perception of UN employees and pay more attention to the behaviour of individual actions.

Before going deeply into this issue, it is necessary to understand how the United Nations can be held accountable for human rights violations.

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Amnesty International, Liberia: No Impunity for Rape – A Crime against Humanity and a War Crime, AFR 34/017/2004, (14 December 2004).

<sup>78</sup> Quis custodiet ipsos custodes? It is a Latin sentence of Jovenal which means who guards the guardian. Many authors in the literature use it in addressing the problem of sexual exploitation by peacekeepers. The main one is the book in which this thesis takes some important information. Guglielmo Verdirame. “*The UN and Human rights. Who Guards the Guardians?*” (Cambridge UK: Cambridge University Press. 2011).



With the landmark appointment of the Vienna Conference and the subsequent creation of the High Commissioner for Human Rights<sup>79</sup>, the topic of human rights received a higher profile at the United Nations than had previously been achieved.<sup>80</sup>

Despite this development, the law principle of promoting rather than respecting human rights is the main problem that allows the United Nation to escape from its responsibilities.

This lack of a proper and comprehensive definition, which in the next chapter will be deep analyses, creates a sort of vacuum in the identification of what it means if the UN violates human rights.

The rapidly evolving process of the UN post-World War II, has not followed the same legal updates. This implies that, even though that the United Nations has developed and taken on new duties throughout time, the Charter does not constitute a new legal framework.

This gap creates a growing inadequacy of the UN Charter to respond to the multi-task assumed by the peacekeeping operations.

This is well documented in the dissertation of Megret and Hoffman where they identify that “technically, the problem is that from a strictly legal standpoint, the United Nations is not party to any human rights instrument, not even the Universal Declaration proclaimed thanks to its efforts.”<sup>81</sup> This ambiguity led to a gap in the theoretical frame of the United Nations for the human rights framework.

Regardless of this lack of definition and legal ambiguity, the United Nations can be held accountable for human rights violations at many levels.

Following, it briefly discusses the different situations in which the UN is accused of not observing high conduct and failing to protect vulnerable communities.

Starting with the case of the UN in the former Yugoslavia, many people have filed complaints about unlawful detention and other abuses of human rights and international humanitarian law by UN personnel. The case of Behrami and Saramati reached the High Court of Human Rights and further we will analyse the consequences.

The facts are the following. Behrami, who lives in Kosovo (the former Yugoslavia), is the father of a child who died in march 2000. The child died because he was playing in a place

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<sup>79</sup> It took place in June 1993. The conference also provided tangible proposals for enhancing and harmonizing the United Nations system's monitoring capability. It requested that the General Assembly establish the office of High Commissioner for Human Rights, which it did on December 20, 1993.

<sup>80</sup> Frédéric Mégret and Florian Hoffmann. “*The UN as a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities. Human Rights Quarterly*”. The Johns Hopkins University Press. Vol. 25, No. 2 (May, 2003), pp. 314-342.

<sup>81</sup> Ibid.

where was not demining after the bombing of the NATO intervention in Kosovo. The sector was under France brigade responsibility. The brigade was part of the international security force (KFOR) presence in Kosovo, mandated by UN Security Council Resolution 1244 of June 1999.

The applicant claims the violation of article 2 of the ECHR, due to not respecting the provisions of Resolution 1244 concerning demining<sup>82</sup>.

The other applicant, Saramati, with Albanian origin living in Kosovo, was arrested by the UNMIK police in 2001, in suspicious of attempted murder. The applicant claims the violation of article 5 of the ECHR, due to the extension of detention.

In both cases, the applications were declared incompatible with the *ratione personae*, consequently the cases had been declared inadmissible application against France and Norway.<sup>83</sup>

In spite of being one of the first cases to reach the court in processing UN action, it shows how the peacekeepers can easily breach human rights and how it is difficult to provide direct control over the action. The methods for addressing accountability for unlawful conduct will be described in detail in the following chapter.

The applicants didn't find recompense due to the lack of proof. "They had not been able to establish any involvement of a German KFOR officer in Mr Saramati's arrest"<sup>84</sup>

The case is important to highlight two main issues.

Firstly, the difficulty in giving reliable proofs in providing the UN involvement; if it is challenging in a case like this, is quite impossible in sexual abuses.

Secondly, the combination of missions involving states and UN authorities produces a grey zone without a solid framework. States are able to hide behind this ambiguous circumstance and avoid their obligations.

Another case to demonstrate human rights violation is the UNOSOM I operation. This mandate was established by the Security Council in April 1992<sup>85</sup>. The purpose was to ensure the safety of the peacekeepers and aid workers involved in the protection of civilians, as well

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<sup>82</sup> Behrami and Behrami v France and Saramati v. France, Germany and Norway (dec.) [GC] - App. No. 71412/01, ECtHR Decision 2 May 2007.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> UNOSOM I. Security Council resolution 751. S/RES/751 (1992) of 24 April 1992.

as, to monitor the Mogadishu cease-fire. This was not a case of post-conflict intervention, differently, the UN militaries were deployed during the civil war<sup>86</sup>.

In the following year, the Security Council established the mandate for UNASOM II<sup>87</sup>, with the authorization to the use force in defence of the mandate. UNOSOM was also tasked with helping rebuild economic, social and political life.

‘African Rights’ research denounced that Belgium, Italy, The United States and other armed forces affiliated with the United Nations Operation in Somalia (UNOSOM) were committing alarming levels of human rights violations.<sup>88</sup>

“The senior officers in UNOSOM and the U.S. military gave orders for military actions that were grave breaches of the Geneva Conventions. These included helicopter attacks on civilian targets and assaults on hospitals”.<sup>89</sup> At that time, the UN and U.S. replied that during the war “the normal rules of engagement do not apply” and they justified their action in defence of the mandate. Even when the enemy did not, the UN always must adhere to the laws of war.<sup>90</sup>

In addition to the break of the Geneva Convention, horrible behaviour by Belgian, Canadian, and Italian troops had been reported in the media.

Photos showed two paratroopers embracing another Somali man over an open flame and "roasting" him until he was badly burned.<sup>91</sup>

A different newspaper contains the following:

“Soldiers forced another boy accused of stealing into a closed container, where he languished in scorching heat without water for two days. He died.”<sup>92</sup>

“Belgian soldier urinating in the face of a Somali, who in a photograph of the incident appears either injured or dead.”<sup>93</sup>

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<sup>86</sup> Christiane E. Philipp. Somalia. “*A very special Case*”. Max Planck Yearbook of United Nations Law, Volume 9, (2005). pp. 517-554.

<sup>87</sup> UNOSOM II. Security Council resolution 814. S/RES/814 (1993) of 26 March 1993.

<sup>88</sup> African rights. “*Human rights abuses by the United Nations forces*”. (July, 1993). Available here: <http://www.hartford-hwp.com/archives/27e/423.html>

<sup>89</sup> African rights. “*Human rights abuses by the United Nations forces*”. (July, 1993). Available here: <http://www.hartford-hwp.com/archives/27e/423.html>

<sup>90</sup> Ibid.

<sup>91</sup> ‘Photos reveal Belgian paratroopers’ abuse in Somalia’ (CNN, 17 April 1997). The news with the photos are available here: <http://edition.cnn.com/WORLD/9704/17/belgium.somalia/>

<sup>92</sup> AP news. June, 24, 1997. by Raf Casert. “In Italy, Belgium and Italy, Somalia peacekeeping scandals growing”. Available here: <https://apnews.com/article/deea729ccf6dfe142799ed245261b675>.

<sup>93</sup> Ibid.

Many are the pictures found where Belgium, Italian and Canadian troops posed in front of the torture death bodies.

Fifteen paratroopers were sentenced and many of them were acquitted. A military court in Brussels sentenced to one month in prison and a £200 fine after they were captured on camera "roasting" a Somali boy over a flaming brazier<sup>94</sup>.

More grave violations of human rights were reported during the mission in Somalia.

These allegations included many violations of the right to life, the prohibition on torture and cruel, inhuman and degrading treatment. Involving also violations of the right to liberty and security.

An example is reported in the Washington Post's newspaper which describes how Somali prisoners were not allowed to see any lawyers. The UN replied that they had no rights to appeal their imprisonment. A son whose father was detained for more than one month claimed: "Which country would accept this kind of {detention}? America wouldn't accept it. Italy wouldn't accept it. What is it? U.N. Secretary General Boutros Boutros-Ghali's law?"<sup>95</sup>. The situation in Somalia demonstrates not just the great potential for abuse by members of peacekeeping operations, but also that the rule of law is at stake.

Furthermore, "when the rule of law issues are not addressed promptly, in addition to the increase in crime, another consequence will be the collapse in the standards of conduct amongst peacekeepers".<sup>96</sup>

The last case, of collective violation of human rights by the UN mission, reported here, is the case of Srebrenica.

The Srebrenica massacre revealed the troops' inability to protect civilians and the difficulty in determining accountability to provide justice to victims' relatives.

In July 1995, Dutch peacekeepers in Bosnia were unable to stop the massacre of more than 8,000 Muslim men in Srebrenica<sup>97</sup>.

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<sup>94</sup> Areesha Shahid. Peacekeeping Operations and accountability. International Humanitarian law and peacekeeping. DLP forum. (May 18, 2022). Available here: <https://www.dlpforum.org/2022/05/18/peacekeeping-operations-and-accountability/>

<sup>95</sup> Washington Post, 7 November 1993, 'Somalis' Imprisonment Poses Questions about U.N. Role', Keith Richburg.

<sup>96</sup> Guglielmo Verdirame. "The UN and Human rights. Who Guards the Guardians?" (Cambridge UK: Cambridge University Press. 2011).

<sup>97</sup> In the case, *Mothers of Srebrenica et al. v. State of The Netherlands and the United Nations*, it is estimated that between 8,000 and 10,000 men were killed in the massacre by Bosnian Serb forces.

The war in Bosnia began as a result of the destabilization of the former Yugoslavia. The collapse of the Socialist Federal Republic of Yugoslavia in 1992, led to an escalation of ethnic conflict between Slovenia, Croatia and Serbia. When Bosnia became independent in 1992, the war broke out due to nationalist tensions involving Croatia, Serbia and Montenegro.<sup>98</sup>

At that time the supervision of UN peacekeepers created “safe zones”, where the Bosnia Muslims could find refuge. However, it was exactly in that area that the men were murdered by Serbian paramilitaries. The Dutch battalion turned into a witness to what is described as European’s worst war crime committed since the Second World War.<sup>99</sup>

“The Bosnian Serbs committed rape, extortion, trafficking, mass executions, dacoits, and acts of terror against the civilians whilst UN peacekeepers failed at protecting them”.<sup>100</sup>

The legal framework of this gross violation of human rights will be discussed further. The example is reported here because it is one of the gross failures of the ‘90s by peacekeeping. Still now difficult to find accountabilities and many are the sources which discuss the theoretical and practical consequences of this episode.<sup>101</sup>

Due to the inability to find justice for the massacre, a foundation was formed to protect the interests of the relatives of those killed in Srebrenica. The so-called "Mothers of Srebrenica", in 2007 pursued legal action, in the District Court of The Hague, against the Netherlands, which sent the soldiers, and the UN.<sup>102</sup>

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<sup>98</sup> Joyce van de Bildt. “*Srebrenica: A Dutch national trauma*”. Journal of Peace, Conflict & Development. Issue 21, (March 2015).

<sup>99</sup> Ibid.

<sup>100</sup> Areesha Shahid. Peacekeeping Operations and accountability. International Humanitarian law and peacekeeping. DLP forum. (May 18, 2022).

<sup>101</sup> Some examples: Human Rights Watch. 15 October, 1995. The Fall of Srebrenica and the Failure of UN Peacekeeping Bosnia and Herzegovina.

Joyce van de Bildt. Srebrenica: A Dutch national Trauma. Journal of Peace, conflict & development. Issue 21, (March, 2015).

Cedric Ryngaert. Otto Spijkers. “*The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court’s Judgment in Mothers of Srebrenica (2019)*”. Netherlands International Law Review (2019) 66:537–553.

United Nation. Report of the Secretary General, ‘Report on the Fall of Srebrenica’ UN Doc. A/54/549 on 15 November 1999.

<sup>102</sup> *Mothers of Srebrenica et al. v. State of The Netherlands and the United Nations*. Case No. 295247/HA ZA 07–2973,

They were seeking compensation from the UN and the Netherlands “by alleging that both are responsible for the failure to prevent the genocide at Srebrenica.”<sup>103</sup> The United Nations was not held liable as it was immune from the jurisdiction of the Dutch domestic courts.<sup>104</sup>

### 2.3 Sexual exploitation and abuse by peacekeepers

After discussing collective peacekeeping responsibilities, with a general overview of the main violation of human rights, now we come to the main topic of this work.

Many reports after the new millennium addressed sexual exploitation and abuse (SEA) by peacekeepers.

The UN has attempted to deploy several surface-level actions to stop this type of behaviour. However, there are still far too many reports of sex exploitation all across the world, and far too little changes in military behaviour.

To be exhaustive into taking in consideration the difficult and vulnerable subject, in thesis will be presented two cases: Haiti and Somalia peacekeeping operations accused of allegations of SEA.

Evidence of sex exploitation during peacekeeping missions still be documented, the aim here is to evidence the problem and discuss the socioeconomic conditions in which this serious crime had been perpetrated.

According to interesting research that goes crosswise, Save the Children reveals that every agency working in a vulnerable situation can be at risk of this problem. Their research identified that a total of 23 humanitarian, peacekeeping and security organizations are associated with the SEA. In their outcome, the result is that “peacekeepers make up the largest proportion of emergency personnel (...) identified as a key source of concern”.<sup>105</sup>

This chapter will not be exhaustive in terms of empirical findings, however, it can be an important starting point in three ways.

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<sup>103</sup> *Mothers of Srebrenica et al. v. State of The Netherlands and the United Nations*. Case No. 295247/HA ZA 07–2973,

<sup>104</sup> Areesha Shahid. *Peacekeeping Operations and accountability. International Humanitarian law and peacekeeping*. DLP forum. (May 18, 2022).

<sup>105</sup> Corinna Casaky. “*No one to Turn to. The under-reported of child sexual exploitation and abuse by aid workers and peacekeepers.*” (Save the Children, London: 2008).

First and foremost, it condemns such behaviour. It takes into account the major reports and media articles that bring to light human rights violations by UN personnel.

Secondly, it investigates the social mechanisms that allow the military to use their position to demand sex in exchange for a little sum of money or food. It analyses the consequences on the local communities, as well as the trauma and the lack of assistance for the victims.

Thirdly, the next chapter will specify the legal and impunity aspect.

Sexual exploitation and abuse undermine the credibility of peacekeeping operations as a whole, not just individual soldiers.

According to the UN resolution sexual exploitation is defined as follows:

*“Sexual exploitation means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.*

*Similarly, the term*

*“sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions”<sup>106</sup>.*

### 2.3.1 MINUSTAH

On 1 June 2004 the Security Council with the resolution 1542, established the United Nations Stabilization Mission in Haiti (MINUSTAH). The intention was to help in restoring and maintain the rule of law, the public Haiti's security and public order.

In addition, the resolution straightens “on the protection of civilians under imminent threat of physical violence”<sup>107</sup>. MINUSTAH should have helped in the coordination of humanitarian assistance in particular to the vulnerable society, women and children.

The mission was established due to the political instability and it was propagated for the natural disaster with the earthquake in 2010 and Hurricane Matthew in 2016.

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<sup>106</sup> United Nation. “*Special measures for protection from sexual exploitation and sexual abuse*”. ST/SGB/2003/13. (October, 2003).

<sup>107</sup> United Nation. Resolution 1542 (2004). S/RES/1542.

After thirteen years of mission in 2017 the MINUSTAH was closed in favour of a smaller one, the UN Mission for Justice Support in Haiti (MINUJUSTH).<sup>108</sup>

What happened during these thirteen years?

In spite of the good intentions listed in the resolution, the reality turned different. Many media had condemned sexual exploitation by peacekeepers<sup>109</sup>. As a result, researchers began conducting interviews and a terrible reality came to light.

AP investigation found that from 2004 to 2007, more than 134 Sri Lankan peacekeepers were involved in exploiting nine children in a sex ring.

A boy identified as Victim 9 said that during three years “he had sex with more than 100 Sri Lankan peacekeepers, averaging about four a day. They gave cookies or a few dollars in exchange for sex.”<sup>110</sup>

An important investigation, to contribute to the collection of empirical data, was conducted by Sabine Lee and Susan Bartels. They studied more than 265 “self -interested narratives from local community members in Haiti about children fathered by UN personnel”<sup>111</sup>.

Significant results come out in understanding important themes related to this issue.

The goal of this article was to learn more about the Haitian people who had lived with peacekeepers for many years. Several people had different perspectives; some had a positive view, while others expressed disapproval of the UN's presence since they were more concerned about sex exploitation.

They also discovered that the Haitian people use special phrases to refer to children born to peacekeepers. In Kreyol, they call them ‘petit MINUSTAH’ and in French they use two different ways such as ‘babes casqués bleus’ (blue helmet babies) or ‘les enfants abandonnés par la MINUSTAH’ (the abandoned children by MINUSTAH).

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<sup>108</sup> Sabine Lee. Susan Bartels. “*They put a few coins in your hands to drop a baby in your - 265 stories of Haitian children abandoned by UN fathers*”. Journal International peacekeeping. (December, 2019). Available here: <https://theconversation.com>

<sup>109</sup> Some example about the Haiti case in newspapers:

New York Times. 18 December, 2019 U.N. Peacekeepers in Haiti Said to Have Fathered Hundreds of Children, Elian Peltier.

AP Exclusive. 12, April, 2017. UN child sex ring left victims but no arrests, Paisley Dodds.

The Washington Post. 18, December, 2019. U.N. peacekeepers fathered, then abandoned, hundreds of children in Haiti, report. Michael Brice-Saddler.

BBC News, 30, November 2006. “UN Troops face child abuse claims”.

<sup>110</sup> AP Investigation: UN troops lured kids into Haiti sex ring. 12 April 2017. Paisley Dodds.

<sup>111</sup> Sabine Lee. Susan Bartels. “*They put a few coins in your hands to drop a baby in your - 265 stories of Haitian children abandoned by UN fathers*”. Journal International peacekeeping. (December, 2019).



This linguistic explanation demonstrates the prevalence of these situations and the way in which these terms categorize and distinguish the children.<sup>112</sup>

The important point of this research was to avoid direct questions about SEA to the participants; however, they could share any kind of story about the life experience with UN peacekeeper personnel. Since the investigation was about SEA, the authors chose specific participants including girls/women, family members or friends who had interacted with MINUSTAH personnel.

The participants have to respond to three main questions, narrate a story and assign a title to it. The latter is a sociologically important aspect of how the women feel, one of them describes her experiences as a "crime against me"<sup>113</sup>.

On one hand, women involved in the abuse by peacekeepers describe the presence of the UN in the territory in a negative way. As we will address below, they describe the misery in which the soldiers let the women with children. The trauma and the difficulties in getting money to pay for food and school.

“The MINUSTAH caused a lot of chaos, especially with young ladies, because they made promises to the ladies, like they would say that they are going to pay for their school, allow them to go to the university, but nothing has materialized.”<sup>114</sup>

“They used to need things, they used to give me, give me money to go to the beach, I would go to the beach, they would give me money to buy clothes... They came to have sex without condoms and I got pregnant.”<sup>115</sup>

On the other hand, the report shows how the ‘Non-Petit MINUSTAH stories’ reported a more positive influence of the UN presence in the territory. The fact that many Haitians had found jobs in the UN, increasing their social status with the rise of income, created an optimistic attitude toward the Peacekeeping presence.

This positive attitude is identified in one of the stories that the participant shared and titled. An example is: “MINUSTAH’s protection in the community”, shared by a married male in Léogâne<sup>116</sup>.

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid, shared by a single female in Port Salut.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid. “MINUSTAH treated me badly”, shared by a single female in Port-au-Prince.

<sup>116</sup> Ibid.

In concluding this considerable research, the authors identified three main themes that arise from the interviews. Firstly, poverty is a major factor in accepting sexual exploitation in exchange for money. Secondly, the repatriation of peacekeepers, which is perceived by the UN as a positive attitude in addressing the issue, leaves women to raise their child alone and increase the status of misery. Thirdly, the relationship with ‘fair-skinned peacekeepers’ and giving birth to them is desirable by the local community.

One other important issue during the mission in Haiti was the outbreak of cholera.

The first case was identified in 2010. Officially the report of death for cholera is 9,200 people but studies<sup>117</sup> identified that many cases are underreported and the real number is estimated to be more than three times the official one, around 30,000 people.<sup>118</sup>

After numerous types of researches about the origin of the outbreak, the experts identified that peacekeepers brought it into the country. In the beginning, one of the theories was that the earthquake in 2010 brought the virus through the water. However, “the evidence overwhelmingly supported the conclusion that the source of the Haiti cholera outbreak was due to contamination of the Meye Tributary of the Artibonite River, as a result of human activity”<sup>119</sup>.

The UN's rejection of military responsibility for the outbreak of the pandemic and the subsequent delay in finding a solution to the problem constituted a violation of human rights, not because the peacekeeper deliberately spread the virus.

Only after years, thanks to evidence, the UN had to admit its fault. However, the only compensation that Haitian received was an apology from the UN because “no way prejudices the Organization’s right to immunity from suit, nor would it open the floodgates to other claims.”<sup>120</sup>

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<sup>117</sup> Francisco J. Luquero et al. “*Mortality Rates during Cholera Epidemic, Haiti*”, 2010–2011. *Emerg Infect Dis.* 2016;22(3):410-416. <https://doi.org/10.3201/eid2203.141970>.

<sup>118</sup> The Guardian, 1 December, 2016. “UN admits for first time that peacekeepers brought cholera to Haiti”.

<sup>119</sup> Daniele Lantagne, G. Balakrish Nair, Claudio F. Lanata and Alejandro Cravioto. “*The Cholera outbreak in Haiti: Where and how did it begin?*” Department of Civil and Environmental Engineering, Tufts University. (Berlin Heidelberg, 2013).

<sup>120</sup> United Nation. “*Extreme poverty and human rights*”. A/71/367 (New York, august 2016).

### 2.3.2 AMISOM

The mission's deployment is already explained above, with UNOSOM and the following mandates. It has shown the human rights violations by peacekeepers as responsibility for attacks in breach of the Geneva Conventions and the killings of civilians in horrible ways. These human rights violations were not the only ones, though; at the time, sex abuse of children and women were also condemned.

I choose this case because differently from Haiti's mission, the deployment of the UN personnel was decided at the time of the outbreak of the civil wars.

The two scenarios depict two distinct deployment contexts for peacekeeping missions, and their purpose is to demonstrate that the presence of militaries—rather than the deployment context—is what leads to the majority of sex exploitation.

The report will present the soldiers from the African Union Mission in Somalia (AMISOM)<sup>121</sup>.

The instances are made more serious by the fact that the reports are dated after the implementation of the different UN guidelines against misconduct.

It is documented<sup>122</sup> that the AMISOM troops have received pre-deployment training regarding the code of conduct and investigators have been provided to the mission in conducting the follow-up of misconduct. This evidence shows how ineffective the provisions are and suggests that the area needs to receive more attention.

The AMISOM is a regional contingent that works under the UN mandate, it was deployed in 2007 with the support of AU's peace and security operations division.<sup>123</sup> The purpose was to use all kinds of measures to reduce the threats from Al-Shabaab and other opposition groups, in helping to establish legitimate governance in Somalia. During the time, since the first deployment, many mandates had been implemented to increase the power and the number of militaries in this mission<sup>124</sup>.

This regional contingency deployment demonstrates in practice what we discussed in Chapter 1 regarding the involvement of more stakeholders in the mission.

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<sup>121</sup> The Mandate was authorized in 2007.

<sup>122</sup> Human rights watch. "The power these men have over Us. Sexual exploitation and abuse by African Union forces in Somalia. (USA, 2014).

<sup>123</sup> The UN Security Council Resolution 1744. S/RES/1744. (February 2007).

<sup>124</sup> The UN security council resolution 2124 S/RES/2124. (2013) Authorized to increase the militaries from 17,731 to 22,126.

As the human rights watch study demonstrates<sup>125</sup>, some AMISOM troops, who should assist in the restoration of peace in the war-torn capital of Mogadishu, have misused their positions of authority in favour of sex services to women and girls.

Using their position of authority over vulnerable persons, soldiers have raped and engaged in various forms of sex assault.

The report of human rights watch was conducted between August 2013 and February 2014 in Somalia. The methodology was based on interviews with 21 women and girls who identified themselves as victims of sex abuse by peacekeepers.

“A number of the women and girls interviewed for this report said that they were initially approached for sex in return for money or raped while seeking medical assistance and water on the AMISOM bases”.<sup>126</sup>

During the interviews, the victims reported that the soldiers give them money to create the illusion of ‘transactional sex’ for avoiding denouncement and possible complaints.

Furthermore, this event didn’t happen one time, one woman said that she was several times sexually exploited by a single soldier. Another testimonial reported that a soldier’s gang raped three women at the same time. A girl with the pseudonym Amina G. said that she had paid sex for six months with the same soldier. The reason why she did it is due to the need for food.<sup>127</sup>

In all the cases interviews show the same *modo operandis*.

Usually, a Somali intermediary, often interpreters for the translation, posit himself near the entrance of the camp or the hospital. He is the mediator who helps the militaries to get in contact while women are trying to get medicines. When the woman arrived, the interpreter went with her to the military. At that point, the soldiers took her to an isolated location where one of them raped her while the other walked around.

Many girls have claimed the same experience, including one who said that the interpreter urged her to come alone, without the baby, to take the medication. When she arrived with another woman, they “dragged them into a bunker area, and threatened them. The Burundian soldiers then beat and raped the women, badly injuring one.”<sup>128</sup>

A girl reported: “I saw four other girls as I waited. Each girl was led to a different tent by the interpreter. The interpreter introduced me to a much older Ugandan soldier. I told the

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<sup>125</sup> Human rights watch. “The power these men have over us. Sexual exploitation and abuse by African Union forces in Somalia. (USA, 2014).

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

interpreter I was having second thoughts and wanted to leave but he said I couldn't since my face was already shown inside the base, I would not be permitted to leave.”

All these testimonies show a structured organized procedure. The interviews explain that all men were soldiers working in the camp. This demonstrates that there is a mechanism that allows breaches of conduct for militaries, a system of corruption where the perpetrators protect each other.

The HRW report testimonials claim that the troop-contributing countries have investigated to prove wrongful acts by peacekeepers in Somalia. However, the legal investment capacity is not enough with the effect “inadequate investigations and poorly assembled criminal files are among the main reasons why prosecutions often end up in acquittal”.<sup>129</sup>

No one will ever be able to remove the trauma, thus it is essential that the victims be able to claim their rights and punish the perpetrators.

#### 2.4 Short and long term consequences.

The Somalia and Haiti cases are not exhaustive in terms of the representation of the victims. However, the intention is to explain one part of the whole situation around the world. We take these examples to denounce what is happening in places where it is difficult to get information.

Here we want to analyse the short and long consequences which affected the women involved in sex exploitation. The importance is to bring women to the centre of the discussion. Before addressing the possible explanation of this misconduct, it is necessary to focus on the consequences. Which are the main repercussions on the life of the victims?

Health, social, psychological and physical are the main themes that we will analyse.

Firstly, in a short time the physical effects can be “chronic pain, infection and infertility”<sup>130</sup>.

Many are the women who said to be slapped and beaten by peacekeepers during the sex abuse. The possibility to have an abortion should not be excluded.

Sexual transmitted infections are one of the most healthy long term consequences of this issue. Lot of reports demonstrates that most of the time militaries did not wear condoms,

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<sup>129</sup> Ibid.

<sup>130</sup> Carol Allais. *Sexual exploitation and abuse by UN peacekeepers: the psychosocial context of behaviour change*. Scientia Militaria, South African Journal of military studies. Vol 39 N. 1 (2011) pp. 1-15.

placing women at risk of HIV transmission and other sexually transmitted infections. Many women said that they had been affected of gonorrhoea after the sex abuse by the militaries<sup>131</sup>.

Moreover, psychological trauma has to be taken into consideration, including depression and “sometimes leading to suicide”<sup>132</sup> are grave consequences.

Most of the victims are unable to access a counselling system, increasing the probability of hiding feelings and keeping the violence hidden, which does not aid in the recovery process. As we see above, many are cases where the victim gets pregnant and many are the children born from peacekeepers.

In Kreyol (the Haitian language) a specific term is used to define the situation, meaning that these children with a foreign and absent father are stigmatized and discriminated from the others<sup>133</sup>. “The birth of tens of thousands of peacekeeper babies creates additional economic pressures on mothers and families”<sup>134</sup>. The repatriation of militaries gave them the possibility to escape from their responsibilities. Some authors call it the “privilege of temporality”<sup>135</sup> because the time constraint in the mission creates the possibility to escape from moral and practical repercussions. This attitude is spread among the militaries and this indifference creates long term problems for the victims.

The exploitation generates a vicious circle where the women accept to have sex in exchange of money due to necessity obligation. When they get pregnant the circle starts again because they need money to raise the children. The lack of assistance and the need for food let the women be vulnerable to other sex abuse in exchange of money and food.

“Any poor Haitian women struggling with the long-term emotional and financial consequences of raising a child born from a peacekeeper father”<sup>136</sup>.

Furthermore, the birth out of wedlock set the mother in a lonely situation due to the difficulties to be accepted by the family. Instead of support from the families, the victims are banished because they shame the name of the family.<sup>137</sup>

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<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Sabine Lee. Susan Bartels. “*They put a few coins in your hands to drop a baby in your - 265 stories of Haitian children abandoned by UN fathers*”. Journal International peacekeeping. (December, 2019).

<sup>134</sup> Paul Higate. “Peacekeepers, Masculinities, and sexual exploitation”. Volume 10 N.1. (United Kingdom, Sage Publications: July 2007). pp. 99-119.

<sup>135</sup> Ibid.

<sup>136</sup> Sabine Lee. Susan Bartels. “*They put a few coins in your hands to drop a baby in your - 265 stories of Haitian children abandoned by UN fathers*”. Journal International peacekeeping. (December, 2019).

<sup>137</sup> “*Not Just a 'Women's Issue': Gender and UN Peace Operations*”. Academic and Research Institution Switzerland (15 Jun 2011).

The lack of family and father support brings the woman into extreme poverty with grave consequences for her health and for the growth of the child.

“It’s only me that’s giving to the child to eat because I can’t pay for school for the child... When I was with the Brazilian, I was 14 years old. I went to school at a Christian school. When I became pregnant, my father kicked me out of the house. And now I do work for someone who gives me 25 gourdes so that me and my child can eat.”<sup>138</sup>

A secondary effect is a loss of trust in the institution. The lack of international response to these allegations gives the feeling of powerlessness and no point in reporting the abuse<sup>139</sup>. The lack of reporting due to trust concerns, fear of consequences, and stigmatization is examined in the next paragraph as the primary reasons to refrain from making reports or responding to interviews done by independent groups.

An example is provided in an interview where a woman decided to not contribute because she made an abortion after having sex with a peacekeepers in Haiti, “and she feared being jailed if she admitted this during a recorded interview”<sup>140</sup>.

## 2.5 Reasons for unreported violence.

One of the main issues in addressing the problem is the lack of denunciation with the effect of a lack of evidence. Several are the reasons why women decide to keep the silence instead to seek compensation and denounce the human rights violations.

Firstly, is the fear of society and family reaction, the possibility to be stigmatized let to avoid telling the truth. The fear of revenge from the military is the main deterrent that reduces the willingness to condemn. In addition, militaries give money with the intent that women didn’t perceive the relationship as exploitation but as transactional sex.

Secondly, the need for money leaves the women with no change of decision and the idea of denouncing is not contemplated due to the necessity of the compensation.

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<sup>138</sup> Sabine Lee. Susan Bartels. “*They put a few coins in your hands to drop a baby in your - 265 stories of Haitian children abandoned by UN fathers*”. Journal International peacekeeping. (December, 2019).

<sup>139</sup> Corinna Casaky. “*No one to Turn to. The under-reported of child sexual exploitation and abuse by aid workers and peacekeepers.*” (Save the Children, London: 2008).

<sup>140</sup> Athena R. Kolbe. “*It is not a gift when it comes with Price: a qualitative study of Transactional sex between UN peacekeepers and Haitian Citizens*”. Stability: International Journal of Security & Development, 4(1): 44, pp. 1–26, DOI: <http://dx.doi.org/10.5334/sta.gf>.

This cause is reflected in a victim interview where she said: “I was worried, I wanted to run but I knew that the same thing that brought me here would get me through this—my hunger,”<sup>141</sup>

Another child from Southern Sudan said: “People don’t report it because they are worried that the agency will stop working here, and we need them.”<sup>142</sup> It is proper for the economic needs that the unreported rise among victims. Annex to this necessity, for some traditional families a good part of the income comes from the marriage of their daughter. If it is known that the woman was involved in sex exploitation this reduce her “value”<sup>143</sup>.

The lack of proper institutions creates a lack of confidence in denouncing. “It’s my word against theirs. The police will only tell more people and arrest no one. There’s no point”. A woman explains in one of the HRW interviews<sup>144</sup>.

All these explanations increase the feeling of powerlessness from the victims with the result of impunity for the perpetrators. For this reason, the Human Right Watch describes this case as a “double victimization” - the first is the sex assault and the second the failure in provide medical, psychological and legal support to the victims.<sup>145</sup>

The report provided by Save The Children identifies that there is a lack of community support, children and young people need proper assistance that encourages them to denounce the abuse against them.<sup>146</sup> However, in a conflict or post conflict situation this assistance is always difficult to find.

AP news, investigating sex exploitation in Congo reported the experience of Bora, that at the time of the rape, was 11 years old. “She didn’t know where to turn. She had no idea she could file a complaint after being raped by a peacekeeper who had offered her bread and a banana.”<sup>147</sup>

The presence of a culture of rape in conflict zone is a big obstacle in facing the problem through the reports.

An additional obstacle is the general ‘ignorance’ of the idea that things can be different.

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<sup>141</sup> Ibid.

<sup>142</sup> Corinna Csaky. “*No one to turn to- The under-reporting of child exploitation and abuse by aid workers and peacekeepers*”. (London, Save the Children fund: 2008).

<sup>143</sup> Ibid.

<sup>144</sup> Human rights watch. “The power these men have over Us. Sexual exploitation and abuse by African Union forces in Somalia. (USA, 2014).

<sup>145</sup> Human Right Watch. 13 February 2014. “Here rape is normal. A Five-Point Plan to Curtail Sexual Violence in Somalia.”

<sup>146</sup> Corinna Csaky. “*No one to turn to- The under-reporting of child exploitation and abuse by aid workers and peacekeepers*”. (London, Save the Children fund: 2008)

<sup>147</sup> AP News. 23 September, 2017. “*UN peacekeepers in Congo hold record for rape, sex abuse*”. By Krista Larson and Paisley Dodds.



The absence of different opportunities creates difficulties for the victims to challenge the social norms and their role in. Both in Somali case and the Haiti ones, the social system allow the sex exploitation, it is taboo and no one speaks about it. A culture of silence led to a culture of impunity, a never-ending search for accountability and an absence of justice for victims.

Somali officials told Human Rights Watch. “Everyone knows that exploitation is happening but no one wants to address it unless the information becomes public—it’s seen as a way of pleasure for soldiers.”<sup>148</sup>

Lack of awareness about how to report claims of violence and often lack of knowledge of the existence of compensation for victims who had suffered human rights violations are weaknesses in the system.

This suggests that neither the support given by the international community is enough to protect vulnerable populations nor it is not concentrated on the main needs.<sup>149</sup>

In the research conducted by Save the Children, when asked how to report sex abuse, most interviewees said they would notify to a family member, but this doesn't mean the complaint would go to an international organization that deals with these issues. Moreover, the different ways to fill out reports on claims of human rights violation, by various NGOs, offer an extra challenge for doing it.<sup>150</sup>

Likewise, practical information should be evaluated and not underestimated. Many are the victims that claim they went to the police and nothing happened, nothing changes.

In the literature, one of the recommendations to reduce rape and raise awareness of the high misconduct by PKO is the empowerment of women.

Allegations of abuse are rare, those reported here are given by independent research that investigated to provide effective support for the victims. The Somali report by Human Right Watch, identified that just 2 out of 21 interviewed women had reported the denunciation to a Somali or other authorities in the territory.<sup>151</sup> A successful example is provided by Kent<sup>152</sup> in

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<sup>148</sup> Human Right Watch. 13 February 2014. “Here rape is normal. A Five-Point Plan to Curtail Sexual Violence in Somalia.”

<sup>149</sup> Corinna Csaky. “No one to turn to- The under-reporting of child exploitation and abuse by aid workers and peacekeepers”. (London, Save the Children fund: 2008).

<sup>150</sup> Ibid.

<sup>151</sup> Human rights watch. “The power these men have over Us. Sexual exploitation and abuse by African Union forces in Somalia. (USA, 2014).

<sup>152</sup> Vanessa Kent. ‘*Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse*’. in C. Aoi, C. de Coning and R. Thakur (eds.), *Unintended Consequences of Peacekeeping Operations* (New York: United Nations University Press, 2007) 44 at 58.

Liberia, where different NGOs work on the empowerment of women in denouncing human right violations.<sup>153</sup> The scope is to give power to the women throughout the process of information and education. In this way women can be more aware of their rights and the duties of the institutions, including the UN.

“Therefore, educating local populations on their rights is also an essential component of the United Nations’ strategy as it can promote an environment that supports human rights, rather than one that undermines them.”<sup>154</sup>

Violence is commonly embedded in relationships across many cultures; thus, women must be empowered in order to have the freedom to make their own decisions and to defend their rights.

For example, in the Haiti case, a survey revealed that society has embraced the idea of domestic abuse. Most of all, in the interviews the violence is perpetrated by husbands or boyfriends. In the national law, the rights of the women in the marriage are not recognized.<sup>155</sup> When UN peacekeeping forces arrive, it is typically in a post-conflict setting where sexual and gender-based violence has been used as a military tactic. As a result, the added abuse by peacekeepers causes further trauma to women and other vulnerable populations. Poverty with lack of employment let to women no choice and no power to refuse transactional sex. For this and other reasons, it is necessary to give an alternative to release women to the status of victims and become promoters of their rights.

“The female victims of this trade are not the key: they suffer disproportionately during and after war and are often forced to barter their bodies simply to survive”.<sup>156</sup>

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<sup>153</sup> Some examples: The Concerned Christian Community, the Centre for Democratic Empowerment, the Association of Female Lawyers of Liberia, the Women in Peacebuilding Network.

<sup>154</sup> Vanessa Kent. ‘*Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse*’. in C. Aoi, C. de Coning and R. Thakur (eds.), *Unintended Consequences of Peacekeeping Operations* (New York: United Nations University Press, 2007) 44 at 58.

<sup>155</sup> Mary Clark. “*Domestic violence in the Haitian culture and the American legal response: Fanm Ahysyen ki Gen Kouray*.” 37 U. Miami Inter- Am. L. Rev. 297 (2006).

See also: Anastasia Gage, “*Women’s Experience of Intimate Partner Violence in Haiti*”, 61 Soc. Sci. & MED. 343 (2005); Michele Wucker, *Haiti: So Many Missteps*, 21 WORLD POL’Y J. 41 (2004).

<sup>156</sup> Vanessa Kent. ‘*Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse*’. in C. Aoi, C. de Coning and R. Thakur (eds.), *Unintended Consequences of Peacekeeping Operations* (New York: United Nations University Press, 2007) 44 at 58.

## 2.6 Forcing and reinforcing the military culture

After analysing the victims' situations which force them to accept human rights violations, it is time to comprehend why peacekeepers feel free to abuse women.

Scholars have provided several responses to this topic; here, we attempt to summarize the most important ones.

This dissertation is required because sex abuse is not just committed by a few "bad apples"; rather, based on the volume of complaints, it can be classified as systemic and persistent conduct. The main theories recognize that the issue concerns the culture of masculinity and the culture of silence between militaries.

The intention is to give a critical examination of the different reasons that explain the behaviour of peacekeepers. While it is crucial to emphasize that there is no justification for this attitude toward local communities, it is nonetheless necessary to frame the problem with some theoretical explanations in order to develop potential remedies.

Many ideas have been proposed by various experts, ranging from military masculinities to gender studies, in an attempt to explain why so many militaries feel comfortable in exploiting sexually women and girls.

In 1992, when the first cases of sex exploitation were published by independent reports, the head of the UN transnational Authority in Cambodia, Yasushi Akashi, justified it as "Boys will be boys"<sup>157</sup>. This response has shown that there was a common belief where the men had to satisfy their sexual desire regardless the consent from the other person. Additionally, this belief was initially supported at a high level within the UN.

Yasushi Akashi's statement is unacceptable, unfortunately, it was not the only one. Many others believed that nothing could be done when so many men were out of the home for so long.

Thankfully, several steps had been taken from this episode.

Several theories examine the social setting through empirical evidence and make suggestions in order to reduce the perpetuation.

This approach ranges from feminist, including gender studies to those that identify a lack of legal framework as an explanation for SEA.

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<sup>157</sup> Carol Allais. *Sexual exploitation and abuse by UN peacekeepers: the psychosocial context of behaviour change*. Scientia Militaria, South African Journal of military studies. Vol 39 N. 1 (2011) pp. 1-15.

During that time, many scholars address the problem through the concept of military masculinities as a key element in the justification of sex abuse.<sup>158</sup> These authors stress the focus on the agency of military masculinities, on the structure of the official military policy and on the post conflict economic condition.

Even though the literature is extensive, the key concepts have been identified here.

However before starting is a prerequisite to identify what is military masculinity.

This concept represents the “traditional constructions of hegemonic masculinities include risk-taking, self-discipline, physical toughness and/or muscular development, aggression, violence, emotional control, and overt heterosexual desire”.<sup>159</sup>

The feminist theory takes into consideration a broad range of issues related to gender social construction which affects the behaviour of men and women. This means that individuals during time throughout social relations, acquire what is the sense to be

“men” and “women”<sup>160</sup>. Concerning the case of sexual exploitation, feminist theories denounce military masculinity through the perspective of gender representation.

The main key elements are the physical domination against the enemies and the social devaluation of women.<sup>161</sup>

Natalie Gilliard defines sexual abuses in Congo as an epidemic no less than HIV/AIDS. She reinforced the concept by “explaining how conceptualizations of gender and resulting unequal power structures cause SEA and shape the reaction of international actors such as the UN”<sup>162</sup>. The author continues affirming that military groups create a mind-set where there is a need to affirm “manliness” via sexual prowess.

This interpretation doesn’t fit with all the troop component and it does not always translate into sex exploitation. However, the theory recognizes that there is a basic layer of violence masculine culture that can easily be implemented and leads to the rape of women.

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<sup>158</sup> Fetherston, A. B. UN peacekeepers and cultures of violence. *Cultural Survival Quarterly* (Spring): 19-23. (1995).

Cockburn, Cynthia. “Gender and the Peacekeeping Military: A View from Bosnian Women’s Organizations.” In *The Post-war Moment: Militarities, Masculinities and International Peacekeeping*, edited by Zarkov Dubravka and Cynthia Cockburn, 103-21. London: Lawrence & Wishart. (2002).

Sandra Whitworth. “Men, militarism & peacekeeping: A gendered analysis”. London: Lynne Rienner. (2004).

<sup>159</sup> Ramon Hinojosa. “*Doing Hegemony: Military, Men, and Constructing a Hegemonic Masculinity*”. *The Journal of Men’s Studies*, 18(2), 179–194. (2010). <https://doi.org/10.3149/jms.1802.179>

<sup>160</sup> Natalie Gilliard. “*Peacekeepers or Perpetrators? An analysis of exploitation and Abuse (SEA) by UN personnel in the Democratic Republic of Congo*”. *Mapping Politics*. Volume 3, (2010-2011).

<sup>161</sup> Stephen Moncrief. “*Military socialization, disciplinary culture, and sexual violence in UN peacekeeping operations*”. *Journal of Peace Research*, September 2017, Vol. 54, No. 5, Special Issue on socialization and violence (September 2017), pp. 715-730.

<sup>162</sup> Natalie Gilliard. “*Peacekeepers or Perpetrators? An analysis of exploitation and Abuse (SEA) by UN personnel in the Democratic Republic of Congo*”. *Mapping Politics*. Volume 3, (2010-2011).

The report of Higate shows how it is easy to fall into the trap of misunderstanding. Indeed, a different perspective is given by a series of interviews with peacekeepers. What emerges there is that “masculinity was presented as vulnerable to the predatory approaches of women and girls noted to be instrumental in exploiting the biological needs of their clients”<sup>163</sup>. Following, some examples from the interviews are reported:

“We were in a bar one night in [the local town]. It was full of girls, dancing and drinking . . . [they were] all over us. [This particular peacekeeper] paid one of the women to keep the others away from him, they were hassling [for sex] so much.”<sup>164</sup>

Or another explains:

“Some of them [peacekeepers] have daughters who are the same age, fourteen or fifteen, and they want to know . . . they can have more than one [girl] at a time, it’s an adventure. The guys might turn them [the young women] down . . . but the girls are persistent and then it becomes a challenge for them [the girls] to get [sleep with] him.”<sup>165</sup>

The general feeling among peacekeepers is that they are the victim in the story. They have to resist the temptation in which the women involved them.

Sadly, the reality is totally different, what the women do, including going to the airport to interact with peacekeepers, is not involved in a real choice but it is forced due to extreme poverty conditions. In doing this, peacekeepers feed and exasperate the inequalities.

“The often desperate circumstances driving the entrepreneurial strategies employed by these women were largely overlooked by peacekeeper participants”.<sup>166</sup>

Furthermore, the incapacity to see the disproportion economic conditions and justifying the sex exploitation with the idea that “women provoke me” is unacceptable and dishonourable for UN personnel. The urge for men to demonstrate their masculinity and their authority, together with their inability to see what is actually happening, are issues that not just individuals but also the UN, as a whole, must address.

This point of view draws attention to a structural problem and creates the idea that militaries are probably not the best solution to use in a vulnerable situation. The rethinking of the peacekeeping operation will be analysed in the next chapter.

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<sup>163</sup> Paul Higate. “*Peacekeepers, Masculinities and sexual exploitation*”. Sage Publications. Vol. 10 N. 1. (July 2007). pp. 99-119.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Paul Higate. “*Peacekeepers, Masculinities and sexual exploitation*”. Sage Publications. Vol. 10 N. 1. (July 2007). pp. 99-119.

Addressing the law theories, some scholars give a further explanation in which the absence of rule of law creates conditions that facilitate sex exploitation and abuse. They affirm that this behaviour is allowed by a “permissive environment arising from the breakdown of law and order”<sup>167</sup>. Kent, in trying to find a theory to explain the widespread an allegations of sex exploitation, affirms that the absence of order, the lack of a proper juridical and penal system, allow different types of human rights violation, including human trafficking, corruption and sex exploitation<sup>168</sup>.

As Stephen Moncrief defines, the peacekeeping operations are a unique combination of different cultural military backgrounds which some of them have been accused of human rights violations in their home country.<sup>169</sup> His empirical research identified that if the mission develops an imminent culture of punishment for those who conduct SEA, this could be a crucial way to protect vulnerable civilians.<sup>170</sup> The UN cannot change the cultural background of the peacekeepers, however, it can impose a culture of punishment during the time of deployment.

## 2.7 Some considerations

In this chapter, the focus has been the allegation of human rights by UN personnel. The intention was to address the issue in a broad sense. It reports a different range of misconduct by peacekeepers during times and in different missions.

We speak about the incapability to protect civilians during the missions, the breach of Geneva Convention, including the violation of the right to life, the inhuman treatment for prisoners and any rights of security and liberty that were respected.

The chapter has reported several UN missions to demonstrate that the allegation of human rights is not one single case but involved all the main peacekeeping deployments.

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<sup>167</sup> Carol Allais. *Sexual exploitation and abuse by UN peacekeepers: the psychosocial context of behaviour change*. Scientia Militaria, South African Journal of military studies. Vol 39 N. 1 (2011) pp. 1-15.

<sup>168</sup> Vanessa Kent. ‘*Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse*’. in C. Aoi, C. de Coning and R. Thakur (eds.), *Unintended Consequences of Peacekeeping Operations* (New York: United Nations University Press, 2007) 44 at 58.

<sup>169</sup> Stephen Monocrief. “*Military socialization, disciplinary culture, and sexual violence in UN peacekeeping operations*”. *Journal of Peace Research*, Vol.54 N.5. (2017), pp 715-730.

<sup>170</sup> *Ibid.*

The focus was the sexual exploitation and its consequences, the mental and physical repercussions that women have to deal after the sex abuses. The children fathered are an important problem that is underestimated. In the Haiti case, many NGOs tried to stress the issues but less have been done by the UN.

As we see above, the Haiti language as a particular name to define the children born from the peacekeepers. It is not the only example, also in Swahili, the term “muzungus” refers to the peacekeepers’ children.<sup>171</sup> A women tell the newspaper that she was not able to finish her studies, she was thrown out of her house and she was not able to find husband for her “mixed-race children”<sup>172</sup>.

In several interviews, many people claim that this behaviour perpetrated by militaries during the mission has been never tolerated in their home countries. The main question is why this misconduct is unacceptable in rich countries but possible in war conflict situations. “Imagine if the U.N. was going to the United States and raping children and bringing cholera, Joseph said in Port-au-Prince. Human rights aren’t just for rich white people.”<sup>173</sup>

Repatriation is not always the best solution. Women mustn’t be considered just as passive receivers of the behaviour of militaries.

The empowerment of women is necessary to give them new possibilities, job opportunities and the proper knowledge about their rights and the duties of the institutions.

Giving women authority and the ability to make decisions is essential in order to shift attitudes away from victimization and resignation.

Women have sex with peacekeepers because they need it, not because they want it.

Justice must be restorative, and attitudes must be modified. A monitor independent mechanism is necessary to reduce the freedom that peacekeepers have in using their power. Even if some independent investigation had been implemented, the institutions didn’t invest properly to have effective results.

At the end of the chapter, we focus on the reasons why peacekeepers perpetrate this behaviour. It is studied that biological needs cannot be used as a justification for SEA by peacekeepers. Further studies identified that “testosterone levels for instance, far from being a clear-cut source of dominance and aggression in society, are as likely to be the consequence

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<sup>171</sup> AP News. 23 September, 2017. UN peacekeepers in Congo hold record for rape, sex abuse. By Krista Larson and Paisley Dodds.

<sup>172</sup> Ibid.

<sup>173</sup> The New Humanitarian. 29 September, 2020. “EXCLUSIVE: More than 50 women accuse aid workers of sex abuse in Congo Ebola crisis.” Available here: <https://www.thenewhumanitarian.org>.

of social relations”<sup>174</sup>. The abuse of power and the culture of silence between militaries are the main obstacle to overcoming the issue. The tolerance of sex exploitation has to be eliminated from the high-level officials to the simple military. The UN has to create credible and reliable mechanisms of discipline and eliminate any type of justification between personnel.

Now with so much research and interviews that testimony the reality is the time to act and not just victimize and complain.

The difficulty in the investigation, the cover-up by militaries and the underreported have the consequence to forget this problem and not address it properly. Sex exploitation is an ongoing problem affecting the most vulnerable population. It affects the name of the UN and the rebuilding process that the mandate should follow. “A community that has experienced serious human rights violations, combat, corruption, and the proliferation of armed groups relies on the influx of peacekeepers to maintain fragile peace by being examples of integrity, honesty, impartiality, and restraint.”<sup>175</sup>

Sex exploitation not only continues the abuse perpetrated during the conflict but can also feed the network of the criminal organization, increasing prostitution trafficking<sup>176</sup>. This attitude reinforces the message that human rights are only for white privileged people. A weak response encourages perpetrators to persist in their behaviour without concern for persecution and punishment.

It is more probable that a victim receives compensation if she/he did a car accident with UN vehicle rather than she/he had been sexually exploited by peacekeepers<sup>177</sup>.

In the next chapter, we focus on the legal issue.

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<sup>174</sup> Ingeborg Breines, Robert Connell and Ingrid Eide. “*Male roles, masculinities and violence a culture of peace perspective*”. (UNESCO, Paris 2000).

<sup>175</sup> Athena R. Kolbe. “*It is not a gift when it comes with Price: a qualitative study of Transactional sex between UN peacekeepers and Haitian Citizens*”. *Stability: International Journal of Security & Development*, 4(1): 44, pp. 1–26, DOI: <http://dx.doi.org/10.5334/sta.gf>.

<sup>176</sup> Ibid.

<sup>177</sup> AP News. 23 September, 2017. UN peacekeepers in Congo hold record for rape, sex abuse. By Krista Larson and Paisley Dodds





## Chapter III - The Legal Framework

### 3.1 Introduction to the Chapter

This chapter gets into the difficult and complex system of jurisdiction with a focus on the issue of immunity for UN personnel. The aim is to provide a comprehensive analysis of the mechanism which rules the UN procedures, the agreement between sending states, the deal with the host country and the application of international law and human right law to the troops deployed under the UN flag.

Firstly, it will discuss the difficulties in defining the line for accountability of international organizations. The particular composition of IO creates a grey zone for the law that increases the challenges addressing responsibilities for human rights violations.

Specifically, the chapter shows different cases where the UN was accused of human rights violations and how the immunity and the exclusive jurisdiction of the sending country led to impunity for perpetrators.

For victims, going to court is challenging for a variety of reasons, from economic concerns to the vulnerable matter that they have to handle. The demand for proof of human rights abuses is another difficult component of the process, even in the rare cases where the victim can provide evidence, there is no guarantee that the court would punish the offenders appropriately, as in the case of Johnny Jean.

Justice should be restorative. Victims should be at the forefront of discussion; however, the difficult bureaucratic system hides them behind academic discussion rather than a practical solution for compensation.

As further will be analysed, the exclusivity of sending states jurisdiction over military misconduct confines the problem to the national court without the proper possibility for find an alternative solution to the issue.

The UN is a corporate agent which means that it is made by states. This chapter explores the legal role of the UN in international communities through the examination of the different legal frameworks developed during the times.

The purpose, here, is to make clear which responsibilities the UN can be held accountable for.

Can the UN be held responsible for the action or consequences due to its decisions?

Logically speaking, if an organization has the authority to take a certain action or make decisions, it should be responsible for the results. However, the case of the UN is not properly like this.<sup>178</sup>

Many have been cases where individuals try to bring the UN to trial, holding them responsible for atrocious violation of human rights, without a positive accountability result.

The last part will address some of them to discuss the main legal obstacles in this field.

In addition, the chapter propose a rethinking of the peacekeeping role in the humanitarian emergencies. If the precedent remedies for address the sex exploitation didn't work, here we propose disarmament for UN personal as a possible solution to reduce the power distance between peacekeepers and local communities.

### 3.2 A matter of responsibility

Before handling the legal issue and concentrating on consequences for perpetrators, it is necessary to understand through a conceptual process how an international organization can have responsibilities. To do this, we need to go further to the main topic of this thesis. We have to analyse the concept of international organization broadly to identify how during the times these institutions can be held responsible for unlawful acts.

It has been written more “by moral theories rather than lawyers”<sup>179</sup> regarding the deep meaning on how a collective can be held responsible for unlawful acts.

For instance, in the book of Toni Erskine there are numerous authors who offer interpretation and analysis of how to manage accountability for community. The need for moral agents in an international organization is the common theme in the discussion.

This term is defined as “the capabilities for deliberating over possible courses of action and their consequences and acting on the basis of this deliberation.”<sup>180</sup>

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<sup>178</sup> Anthony Lang, Jr. *The United Nations and the fall of Srebrenica. Meaningful responsibility and international society.* In Toni Erskine “Can institutions have responsibilities? Collective moral agency and International Relations”. Lecturer in International Politics. (University of Wales Aberystwyth, UK: 2003).

<sup>179</sup> Jan Klabbers. “*Issues of Responsibility.*” Chapter. In *an Introduction to International Institutional Law*, 300–319. (Cambridge: Cambridge University Press, 2002). doi:10.1017/CBO9781139165051.016.

<sup>180</sup> Toni Erskine. “*Can Institutions have responsibilities?*”. *Collective moral agency and international relations.* (New York: Springer, 2003).

Some US international relations scholars deny the possibility that international organizations have a moral agency to address responsibilities, because they lack ontological independence<sup>181</sup>. They stress on the concept that “International Organizations are mechanisms through which others (usually states) act; they are not purposeful actors”<sup>182</sup>.

Differently, Toni Erskine argued that if properly defined, the international organization can be recognized as a moral agent even if there is not a simple solution to this considerable question. Indeed, “addressing how responsibilities can be distributed is necessarily a prior step to understanding what it means to blame institutions for actions or failures to act.”

There are many discussions related to the specific aspect of the IOs, however, it is beyond the scope of this chapter to provide the difficult philosophical debate on the International Organizations. It is essential to figure out that the legal practice is difficult because already the theory is not well codified.

In this way it is not surprising that the law on the responsibility of international organizations is still not defined.

If we take as a guarantee that an international organization can be held responsible because with their decision they create consequences in the reality, in any instance, there are other preliminary considerations that must be added to the argument before getting to the formal legal component.

For example, the agents need to have a direct connection with the matter. By using the NATO dropping bombs over Belgrade as a key illustration, Klabber poses the question of who is directly responsible. Should it be all the members of NATO or only those who actively participate?<sup>183</sup>

The authors also refer to this complex circumstance as the "paradox of many hands," which occurs when the separate responsibility of each person diminishes proportionally if the blame for any given act is shared among more people.<sup>184</sup>

Unfortunately, there isn't a direct answer to the previous question, Klabber concerning the case of Belgrade declares that the ICJ has no jurisdiction over the case because Serbia at the time

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<sup>181</sup> Jan Klabbers. “*Issues of Responsibility*.” Chapter. In *an Introduction to International Institutional Law*, 300–319. (Cambridge: Cambridge University Press, 2002). doi:10.1017/CBO9781139165051.016.

<sup>182</sup> M. N. Barnett and M. Finnemore. “*The Politics, Power and Pathologies of International Organizations*”, *International Organization*, LIII (1999) 699–732.

<sup>183</sup> Jan Klabbers. “*Issues of Responsibility*.” Chapter. In *an Introduction to International Institutional Law*, 300–319. (Cambridge: Cambridge University Press, 2002). doi:10.1017/CBO9781139165051.016.

<sup>184</sup> Marcus A. P., Boves et al. *The quest for responsibility: Accountability and citizenship in complex organizations*. (United Kingdom: Cambridge university press, 1998).

was not part of the UN, consequently not part of the ICJ statute.<sup>185</sup> This example is reported to demonstrate the articulated and complex system concerning jurisdiction and international organization responsibilities.

The previous chapter addresses several violations of human rights by peacekeepers. As a result, in order to view the legal concerns broadly, it is necessary to comprehend the practical implications. In this field, the need of direct control over the army is another significant point concerning the issue of addressing responsibility.

According to the ILC draft articles on the responsibilities of international organizations, the document defines the elements of a wrongful act: “when conduct consisting of an action or omission: (a) is attributable to that organization under international law; and (b) constitutes a breach of an international obligation of that organization”.<sup>186</sup>

In this document, article 7 underlines the fact that the international organizations need “effective control over the conduct”<sup>187</sup> to be responsible for wrongful acts.

According to this definition, even if the UN should be responsible for wrongful action, it would be difficult to attribute effective control to the UN, specifically concerning the peacekeeping operations.

Many discussions had been done throughout the meaning of what is direct control. In the General Assembly's discussion, for instance, it has been claimed that the “conduct should be attributed to the international organization exercising ultimate control and not to the State exercising operational control”<sup>188</sup>.

Regarding this assumption for example, in the case of *Al Jedda vs The United Kingdom*<sup>189</sup>, the court considered that “the United Nations Security Council had neither effective control nor ultimate authority and control over the acts and omissions of foreign troops within the Multinational Force. Due to this the applicant’s detention was not, therefore, attributable to

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<sup>185</sup> To have more information: *Case concerning the legality of the use of force (Serbia and Montenegro v. Belgium)*, preliminary objections, [2004] ICJ Reports 279.

<sup>186</sup> International Law Commission at its sixty-third session. “Draft articles on the responsibility of international organizations”, (2011) UN Doc. A/66/10, p.2.

<sup>187</sup> Ibid article 7.

<sup>188</sup> Greece (Official Records of the General Assembly, Sixty-fourth Session, Sixth Committee, 16th meeting (A/C.6/64/SR.16), para. 23.

<sup>189</sup> *Al-Jedda v. The United Kingdom*. 27021/08 (ECHR, 7 July 2011). The applicant, detained in Iraq by British troops, claims the violation of article 5§ 1 of the Convention on Protection of human rights by British troops. The applicant was detained on the grounds that his imprisonment was essential for Iraq's immediate security.

the United Nations”<sup>190</sup>. In this case, the United Nation was sentenced immune from the court due to a lack of proof concerning control over the troops.

Providing effective control is the main challenge. In the report of the Commission of Inquiry regarding the unlawful act during the operation in Somalia (UNOSOM II), it is provided that despite having a significant influence on UNOSOM's mission and the safety of its soldiers, several significant activities carried out as part of the United Nations' mandate and under its authority were completely out of the organization's command and control.<sup>191</sup>

“The Force Commander of UNOSOM II was not in effective control of several national contingents which, in varying degrees, persisted in seeking orders from their home authorities before executing orders of the Forces Command. Many major operations undertaken under the United Nations flag and in the context of UNOSOM’s mandate was totally outside the command and control of the United Nations”<sup>192</sup>.

Following a similar methodology, the Court of First Instance of Brussels determined that the commander of the Belgian contingent of the United Nations Assistance Mission for Rwanda (UNAMIR) made the decision to leave a de facto refugee camp in Kigali in April 1994 "under the aegis of Belgium and not of UNAMIR.”<sup>193</sup>

Effectively, one of the key issues with attributing accountability to a UN mission is the conduct's partial control. This situation happens due to the multi-participation of actors in the peacekeeping operations.

Furthermore, most of the time troops don’t follow the main instructions, rather they respond to their national officials. Most of all, as Verdirame underlined, “effective control does not mean exclusive control”<sup>194</sup>. This conduct creates a difficult situation for accountability in the case of wrongful actions.

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<sup>190</sup> United Nations. Report of the International Law Commission. Sixty-third session. Supplement No. 10 A/66/10. (2011).

<sup>191</sup> United Nation S/1994/653, paras. 243–244.

<sup>192</sup> Report of the Commission of Inquiry on Somalia, UN Doc. S/1994/653, paras. 243–4, cited in commentary to Article 6 in ILC (2009).

<sup>193</sup> United Nations. Report of the International Law Commission. Sixty-third session. Supplement No. 10 A/66/10. (2011). p. 106.

<sup>194</sup> Guglielmo Verdirame. “The UN and Human rights violator” (United Kingdom: Cambridge University press, 2011). p.103.

Relating to the case of Srebrenica, in the judgment, “the Supreme Court held that conduct by Dutchbat could only be attributed to the State if the State in fact exercised effective control over that specific conduct”<sup>195</sup>. The court decided that even if the Dutchbat<sup>196</sup> could be considered a sub organ of the UN, the ultimate responsible is the Dutch State because it had direct control over the operation. Consequently, the UN was considered immune from the jurisdiction of the Dutch court.

Further difficulties related to direct control are attributed to the superior order. A peacekeeping mission is first and foremost a military operation, hence hierarchical structure is inevitably used to manage it<sup>197</sup>. In doing this, the Model Memorandum of Understanding (MoU) described in the article 7(4) that the commander of the mission has the responsibility to maintain the discipline and the order of the contingent.

Klepper in managing the superior order accountability identify “the paradox of obligation”<sup>198</sup> in which the responsibility of an unlawful act will be clearer the more specific the directive had been done. However, this is not the common situation because, as the author explains, avoiding flexibility in giving order can help in finding accountability but it cannot always be appropriate. The result is that orders are typically provided based on the circumstances, giving subordinates more discretion over how to proceed.

In this way, if the order is subject to interpretation, in case of violation of law, it will be more difficult to find direct control and precise responsibility based on law.

The command/superior responsibility paradox is ruled by customary international law and by the article 28 of the ICC. These rules are also articulated in the ICTY statute article 7(3)<sup>199</sup>.

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<sup>195</sup> Cedric Ryngaert. Otto Spijkers. “*The end of the Road: State liability for acts of UN peacekeeping contingent after the Dutch Supreme court’s judgment in Mothers of Srebrenica*”. *Neth Int Law Rev* 66. (2019). pp. 537–553.

<sup>196</sup> Abbreviation of Dutch Battalion that was provided by Netherlands in the UN peacekeeping operation during the fall of Srebrenica.

<sup>197</sup> Melanie O’Brien. “The Ascension of Blue Beret Accountability: International criminal court command and superior responsibility in peace operations”. *Journal of Conflict & Security Law*, Winter 2010, Vol. 15, No. 3 (Oxford University press: Winter 2010), pp. 533-555.

<sup>198</sup> Jan Klabbers. “*Issues of Responsibility*.” Chapter. In *An Introduction to International Institutional Law*, 300–319. (Cambridge: Cambridge University Press, 2002).

Also see: Michael Harmon, *Responsibility as Paradox: A Critique of Rational Discourse on Government* (Thousand Oaks, CA, 1995).

<sup>199</sup> United Nations. Updated Statute of the International Criminal Tribunal for the former Yugoslavia (2009). Article 7(3): “The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

The Rome Statute defines the parameters for how a commander could be held responsible for the crime conducted by the subordinates<sup>200</sup>.

To identify the direct responsibility of war crimes, also at this point, effective control over the subordinates is required.<sup>201</sup> It is sufficient *de facto* authority, meaning that it is necessary for the real exercise of power, to determine the liability of the commanders.

The liability of command responsibility has to be set by some standard (*Mens reas*):

This includes *Actual knowledge* which means the knowledge that a crime is going to happen or it has been perpetrated. Due to the hierarchical structure the commander must be aware of the conduct of subordinates.

And the “*Reason to know*” means that the superior is held responsible if he/she had the necessary knowledge to indicate an investigation to determine whether the crimes had already been committed or were about to be.<sup>202</sup>

Under Article 28 of the ICC, it is not essential to provide evidence of any directive or action performed by the superior personally, however, the commander can be held responsible for action or inaction in preventing the crime.

Regarding this topic, there is a key question in the subject that is still challenging to resolve. For instance, should the commander be held legally guilty for the "principal crime" or only for his/her personal "dereliction of duty"?<sup>203</sup>

Many are the discussions related to the application in the academic field, a literal interpretation of the article suggests that the commanders who are responsible for their subordinates should also respond to the crimes committed by them. One of the interpretations is that for being responsible, the command should have participated at least in part in the crime to be effectively responsible.

The debate is broad and it is behind the scope of this chapter to illustrate the particular cases of subordinate order, however for the interpretation of the following cases, it is necessary to know that a commander can be held responsible if it fulfils three important parameters;

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<sup>200</sup> Mark Klamberg. “*Commentary on the Law of the International Criminal Court*”. (Brussels: Torkel Opsahl Academic EPublisher, 2017).

<sup>201</sup> Melanie O'Brien. “The Ascension of Blue Beret Accountability: International criminal court command and superior responsibility in peace operations”. *Journal of Conflict & Security Law*, Winter 2010, Vol. 15, No. 3 (Oxford University press: Winter 2010), pp. 533-555.

<sup>202</sup> Mark Klamberg. “*Commentary on the Law of the International Criminal Court*”. (Brussels: Torkel Opsahl Academic EPublisher, 2017).

<sup>203</sup> Ibid



(1) the presence of a relationship of superiority and subordination, (2) the subjective element (mens rea), and (3) the lack of prevention and punishment.

Relating to the case of SEA, as seen in the previous chapter, the peacekeepers' abuse is systematic and it is difficult that the subordinate is uninformed of the misconduct.

Therefore, theoretically, the lack of supervision can fit under article 28 of the ICC, however, it is difficult to demonstrate due to the predominance of the culture of silence between militaries. The lack of collaboration with the investigations led to a lack of crime charges in front of the ICC statute.

In light of these premises, it is time to list the legal framework present in the international field to address the violation of human rights by international organizations. In addition, it will analyse the legal agreement signed by sending states, host states and the UN necessary to rule the three different jurisdictions.

### 3.3 Legal Framework

Ensuring accountability for peacekeeping is challenging because it includes different types of jurisdiction, the troop-contributor's states (TCC), the host state and the UN.

In the section on international organization accountability, we previously mentioned a few challenges. Taking all of these into account, the section will give an outline of the legal system.

As demonstrated in earlier chapters, further steps have been done to address SEA by peacekeepers. The UN had tried to implement a set of instruments to prevent this misconduct but little had been done to punish the perpetrators. Additionally, many recommendations by the UN are not legally binding due to this the military cannot be held responsible during the missions.

Military are only subject to the jurisdiction of their own countries and this is the predominant problem for the lack of UN enforcement.

In taking into consideration this gap, it is important to identify the main document that binds the sending country and the UN. Firstly, it will list the main document about the peacekeeping mission that does not always include how to allocate human rights violations.

As we see in the first chapter, a peacekeeping operation is deployed only with the approval of the host country. The Model Status of Forces Agreement (SOFA) is a bilateral agreement between the UN and the host country, which sets the legal relationship between the UN operations and the host state. Each mission is settled with this document. If we take as an example the MINUSTAH and the government of Haiti, it contains all the requirements that each party has to respect. It ranges from the matter of communications - such as the possibility to install a radio station - to the immunity and privilege of the UN personnel.<sup>204</sup> This agreement binds the parties to follow the Geneva conventions of 1949 and the Additional Protocols of 1977<sup>205</sup>. The latter are international treaties that regulate and limit misconduct during the war. They protect civilians and the personnel who are present in the territory but not involved in the conflict (such as aid workers and humanitarian assistance) and those who no longer can take part in the conflict (wanderers, sick or prisoners of war). The SOFA's purpose is to maintain the militaries' independence while they are taking part in peacekeeping missions in a host country. While the agreement between the UN and the troop-contributing countries (TCCs) is settled with a contribution agreement, the so-called Model MOU.<sup>206</sup>

The MoU outlines the operational, financial, and logistical elements about the member nations' commitment to persons, equipment, and services. The MoU clarifies the UN's and the contributing country's obligations concerning discipline, conduct, inquiry, and accountability. The latter components are crucial to this research since they constitute a deciding factor in charges of misconduct and SEA. In the MoU and its new visitations, the article 7 includes an important stance related to the duty of the Government to give the national contingent proper training related to the conduct of the UN personnel<sup>207</sup>. It also includes the repatriation of the commander that failed to report misconduct. “The Government understands that the United Nations will repatriate a contingent commander who is found by a United Nations investigation to have failed to cooperate with it during an

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<sup>204</sup> Agreement between the United Nations and the Government of Haiti concerning the status of the United Nations operation in Haiti. Volume 2271.

<sup>205</sup> The United Nations shall ensure that MINUSTAH shall conduct its operation in Haiti with full respect for the principles and rules of the international conventions applicable to the conduct of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict;”. It is taken from the SOFA between Haitian government and MINUSTAH.

<sup>206</sup> Noelle Quenivet. “*The role of the International Criminal Court in the Prosecution of Peacekeepers for sexual offenses*”. In Roberta Arnold. “Law Enforcement within the Framework of Peace Support Operations” (Brill, 2008).

<sup>207</sup> Article 7 (4) Ter. United Nations Standard, Revised draft model MoU.

investigation into possible serious misconduct”<sup>208</sup>. The MoU is an important document for allegations of SEA by peacekeepers, however, is not legally binding.

The regulations which govern the UN personnel on mission are based on the Secretary General's Bulletin<sup>209</sup> and the Convention on the Privileges and Immunities of the United Nations. The Ten rules and the ‘We are the United Nations peacekeeping’ documents have been taken into consideration by sending countries but they are not legally binding.<sup>210</sup>

The United Nations' laws and regulations do not apply to specific contractors or consultants. There are no explicit sexual activity-related clauses in their service contract.<sup>211</sup>

As we see in the development of the peacekeeping operation, the outbreak of scandal relates to sexual exploitation by peacekeepers had implemented some initiatives to regulate this misconduct with the intent to reduce the perpetrations. As a response to the investigation of different NGOs and the proof of allegations of SEA by peacekeepers, the UN created the Zero tolerance approach to this misconduct.

In 2003, the Secretary-General signed the Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse<sup>212</sup>, known as ‘Zero Tolerance policy’.

This document defines of the SEA and it defines some boundaries relate to what can be considered sex exploitation. Regarding this latter specification, some scholars criticize the Bulletin because it lacks clarity in providing specific detail of some important information. For example, the Section 3, defines SEA as serious misconduct and it claims that “sexual relationships between peacekeepers and beneficiaries of assistance are strongly discouraged given inherently unequal power dynamics.”<sup>213</sup>

Oliviera Simic in analysing the language used by the UN to address the problem, critics the broad definition and the incapability of defining what is ‘unequal power dynamics’<sup>214</sup>.

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<sup>208</sup> Article 7(3) quarter. United Nations Standard, Revised draft model MoU.

<sup>209</sup> United Nations. “*Secretary general's bulletin, regulations governing the status Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission*”. ST/SGB/2002/9 (New York: United Nations, 2002).

<sup>210</sup> Noelle Quenivet. The role of the International Criminal Court in the Prosecution of Peacekeepers for sexual offenses. In Roberta Arnold. “Law Enforcement within the Framework of Peace Support Operations” (Brill, 2008).

<sup>211</sup> Ibid.

<sup>212</sup> Secretary General’s Bulletin - Special Measures for Protection from Sexual Exploitation and Abuse, UN Doc ST/SGB/2003/13 (9 October 2003)

<sup>213</sup> Ibid.

<sup>214</sup> Olivera Simic. “*Rethinking ‘sexual exploitation’ in UN peacekeeping operations*”. Melbourne Law school. (Australia: Women’s studies International forum, 2009).

She also points out the lack of a clear distinction between sexual behaviours and the lack of a detailed investigation of the potential relationships that can arise between local women and peacekeepers.

The scope of these critics is to go further than to the simple prohibition of sex with local women rather than to see women as an active actors in decision-making in a vulnerable context. The simple prohibition of sex doesn't reflect reality and can occur in more violation of human rights. "Failure to further stratify or better distinguish between the types of conduct covered by the Bulletin definition may in effect trivialize serious incidents of SEA".<sup>215</sup>

Another critique relating to the use of terms is provided by Durch et al. which claims the lack of a proper meaning to what is a 'beneficiary of UN assistance'<sup>216</sup>.

Despite these necessary critics, the Zeid Report had been an important step for the UN to highlight the problem of SEA. It lists some necessary recommendations that can help in protecting women and reducing perpetuation. For example, it calls for a permanent UN professional investigative capacity. The document stresses the necessity of periodic reports to monitor the implementation of the recommendations. It focuses on prevention as a key element in reducing the allegation of sexual exploitation with the necessity that all the members of the UN in the mission are aware of the rules and standard of conduct under the UN flag.<sup>217</sup> The pre-deployment training is a key moment to underline the mandatory prohibition of sex exploitation under UN representation.

The development of some tools to address the issue is crucial to at least establish a standard of conduct, even though none of these requirements can ensure proper execution and very few are mandatory. Still more work to be done.

A complementary document was implemented in 2008, listing the guide and principle of the peace operation, the so-called Capstone Doctrine. This document aims to clarify the peace operation scope and guide the personnel deployed in host states. It discusses the different activities conducted by peacekeeping from peace to security.

The only reference to sexual exploitation in the Capstone doctrine is the quotation to the zero tolerance for "any kind of sexual exploitation and abuse, and other forms of serious

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<sup>215</sup> Roisin Burke. "Troop-discipline and sexual officers by UN military peacekeepers: The UN's response - moving beyond the current status quo?" (The Netherlands: Martinus Nijhoff Publishers, 2014).

<sup>216</sup> William Durch, Katherine Andrews and Madeline England, with Matthew Weed. "Improving Accountability Criminal Accountability in United Nations Peace Operations, Report from the Project on Rule of Law in Post-Conflict Settings". Stimson Centre Report No 65(1) (June 2009) 42 ('Stimson Report').

<sup>217</sup> Ibid

misconduct”<sup>218</sup>. Despite this, nothing has been discussed if the militaries could have any kind of repercussions and nothing has been said regarding the support of victims and the legal aid to the local communities.

Above it is listed the main principle and standard of conduct that peacekeepers should follow during their time on the mission. The documents don't provide an effective protocol in addressing legally the personnel who ignored it. Indeed, the tools are related to the recommendations and they formally present the UN as a promoter of human rights but it doesn't describe the legal consequences of this misconduct. Following, it will introduce the reasons why the UN couldn't present a solution for the victims but it could only try to prevent the allegations through material for training and investigations.

### 3.3.1 Immunity dilemma

Some feminist studies explain the never-ending perpetration of sex exploitation by peacekeepers due to impunity. The latter “in turn is both a result, and a perversion, of the immunity that UN peacekeepers are granted while in UN service”<sup>219</sup>

Firstly, it is necessary to understand how immunity works in the field of International organizations and the UN.

The reason for the implementation of immunity for international organizations lies in the fact that “different national courts may provide international organizations' staff members with different remedies, claims and types of compensation; they may demand different forms of evidence and offer different procedural rights. The immunity of the employer international organization is intended to avoid these consequences”<sup>220</sup>. In other words, immunity is a guarantee for UN personnel in the host country. However, sometimes this instrument turns more into impunity for militaries with more protection for the UN rather than for local communities.

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<sup>218</sup> United Nations Peacekeeping operations. “*Principle and guidelines*”. (New York: United Nation Secretariat, 2008).

<sup>219</sup> Kathleen Jennings. “*The Immunity Dilemma: Peacekeepers' Crimes and the UN's Response*”. E-International relations. Sep 18 2017. Available here:<https://www.e-ir.info/2017/09/18>.

<sup>220</sup> August Reinsch. “*The immunity of International Organizations and the Jurisdiction of their administrative tribunals*”. Chinese Journal of International Law (2008), Vol. 7, No. 2, 285–306 doi:10.1093/chinesejil/jmn020.

Since the UN Peacekeeping operations are considered subsidiary organs of the UN, its employees are entitled to UN privileges and immunities. According to the UN Charter article 105(4) declares:

“Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.”<sup>221</sup>

In addition to the Charter, the UN personnel is bound under the Convention on the Privileges and Immunities of the United Nations (following The Convention) entered into force the 2 December of 1948.

Section 29 of the Convention binds the UN to seek alternative mechanisms to counterbalance the absolute immunity of the UN. “[t]he United Nations shall make provisions for appropriate modes of settlement of: (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party.”<sup>222</sup>

Also in the SOFA model agreement, the UN and its members are guaranteed immunities “with the exception of civil law cases relating to activities outside official duties (*jure gestionis*).”<sup>223</sup> The articles from 46 to 54 of the SOFA grant that the immunity from local courts should include methods for alternative dispute resolution. “Where the peacekeeping operation or its members have immunity from jurisdiction of local courts in respect of a private law claim, the Model SOFA provides for alternative dispute settlement mechanisms”<sup>224</sup>

The concept of absolute immunity for the International Organization was the main trend until the middle of the 20th century<sup>225</sup>. Due to an increasing claim to the national court and the need to address human rights violations, new perspectives have been implemented. The concept that everyone has a right to access justice, whether it be through a right to access a court or a comparable system of independent and impartial dispute resolution, has gained popularity over time.<sup>226</sup>

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<sup>221</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

<sup>222</sup> United Nation General Assembly Res. 22(1), “*Convention on the Privileges and Immunities of the United Nations*”. (New York: 13 Feb. 1946), s. 2.

<sup>223</sup> Model Status of Forces Agreement for Peace-keeping Operations, UN Doc. A/45/594 (1990).

<sup>224</sup> Rosa Freedman. “*UN immunity or Impunity? a Human rights based challenge*”. The European Journal of International Law Vol. 25 no.1 Oxford University Press, 2014.

<sup>225</sup> See the overview of cases present in the work of August Reinsch p. 294 II.B

<sup>226</sup> August Reinsch. “*The immunity of International Organizations and the Jurisdiction of their administrative tribunals*”. Chinese Journal of International Law (2008), Vol. 7, No. 2, 285–306 doi:10.1093/chinesejil/jmn020.

It is important to underline that the right to appear in court and seek justice is a basic right of every person. These rights are covered under the UDHR, the ICCPR, the ECHR, as well as customary human rights legislation<sup>227</sup>.

In the case *Waite and Kennedy v. Germany and Beer and Regan v. Germany*, the Court argued that while international organizations' immunities might pursue a legitimate goal that would limit access to a court, they shouldn't be absolute.<sup>228</sup>

The necessity to provide alternative mechanisms to seek compensation is a prerogative to follow the duties of IO and most of all the UN ones.

Article 6 of the ECHR declares that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”<sup>229</sup>

Concerning the case of the outbreak of cholera in Haiti, reported in chapter 2, Rose Freedman discusses the impunity due to the UN immunity in this specific situation. In order to contest the UN's immunity, Haitian cholera victims' lawyers filed a class action lawsuit in the Southern District of New York in October 2013.<sup>230</sup>

The UN and MINUSTAH are accused of negligence, wilful recklessness, and/or gross negligence in the cases filed on behalf of the 5000 people afflicted by the cholera outbreak. According to Paula Arias, head of the International Moot Court Program at the University of Miami School of Law, the U.N. was legally required to provide clean water and hygienic conditions for Haitians, but advocates tried to demonstrate that this responsibility had been broken.<sup>231</sup>

“The UN insists that the claims submitted are not receivable owing to those claims involving review of political and policy matters.”<sup>232</sup>

The Bureau des Avocats Internationaux (BAI) lawyers who follow the case of the cholera outbreak underline, in relation to the response of the UN, that they are specifically the kind of

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<sup>227</sup> Ibid.

<sup>228</sup> App. No. 28934/95, *Beer and Reagan v. Germany*, 33 EHRR (2001) 54, at para. 58; App. No. 26083/94, *Waite and Kennedy v. Germany*, 30 EHRR (1999) 261, at para. 73. Take from Rosa Freedman see Note 40.

<sup>229</sup> Article 6(1) Right to a fair trial. ECHR.

<sup>230</sup> Rosa Freedman. “UN immunity or Impunity? a Human rights based challenge”. *The European Journal of International Law* Vol. 25 no.1 Oxford University Press, 2014.

<sup>231</sup> American Bar Association, 05 February, 2017. “UN immunity beats back legal claims by Haitian cholera victims, battle continues. <https://www.americanbar.org/>

<sup>232</sup> Ibid.

claims that the UN is required to hear and resolve under Section 29 of the Convention and Articles 54 and 55 of the SOFA.<sup>233</sup>

Relating to the response asserted “policy or political matters” the advocates context that it has no basis in law. It doesn’t refer any type of legal authority to contest in this way, however “assuming that such an exception existed, it would not excuse the UN from hearing Petitioners’ claims”<sup>234</sup>. The advocates additionally point out that only in cases where the demand is for financial loss compensation can a UN document connected to the policy and political topic be considered<sup>235</sup>. Differently, their claim is related to the negligent omission to adequately screen troops for cholera.

The intention of this chapter, the purpose is to demonstrate how it is challenging to claim litigation against the United Nation because many bureaucratic and legal obstacles have been created.

The Haitian case is ongoing and the applicants know that it will not be a simple path, however it created a significant precedent necessary to increase the knowledge and to reduce impunity due to the immunity of the UN.

To conclude the dilemma of immunity, the case of Srebrenica is a masterclass example to prove that even if the theory could seem linear, the application process is challenging and filled with uncertainty, which promotes impunity.

A Dutch regional court heard the Srebrenica case after the applicants filed lawsuits against the Netherlands State and the UN. However, the court determined in July 2008 that the Netherlands Government was not required by international law to enforce the prohibition of genocide through its civil law and that the court lacked the authority to recognise the claim against the UN.<sup>236</sup>

The Netherlands Supreme Court confirmed on April 13th, 2012, that in accordance with the relevant provisions of the United Nations Charter and the Convention on the Privileges and Immunities of the United Nations, the UN enjoyed broad immunity.

In addition, it was not automatically that the signature states of the convention held the jurisdiction over the UN and it was not forced to appear before national courts of the states

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<sup>233</sup> Bureau des avocats internationaux. Institute for justice and democracy in Haiti, letter to criticize the response of the UN for the claim addressed by the haitian for the outbreak of the cholera. <https://www.ijdh.org/>.

<sup>234</sup> Ibid.

<sup>235</sup> Report of the Secretary General on the Procedures of Article VIII, Section 29, supra note 137.

<sup>236</sup> *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.) - 65542/12. Decision 11.6.2013.



which were signatories to the Convention. “The UN’s immunity was absolute and intended to ensure its functioning in complete independence.”<sup>237</sup>

The applicants argued that the immunity protecting the UN should be revoked because their claim was based on a genocide for which they held the UN (and the Netherlands) accountable. However, the Court found that international law did not support the idea that a civil claim should take precedence over immunity from suit, just because it was based on an allegation of a particularly serious violation of an international law standard.<sup>238</sup>

To conclude, referring to the necessity to provide alternative tribunals based on the 29 sections of the Convention, the applicants claim that there was no alternative jurisdiction to bring the UN to a process. The court replied “the fact that the UN had so far not made available any modes of settlement of claims relating to the acts and omissions of UNPROFOR was not imputable to the Netherlands and the nature of the applicants’ claims did not require the Netherlands to step in.”<sup>239</sup>

The UN has made some progress toward integrating human rights in all peacekeeping operations. These show UN acknowledgement of the need to prioritize human rights in peacekeeping even though they are not specifically focused on accountability.<sup>240</sup>

### 3.4 A matter of Jurisprudence

Concerning the Dutch court issue, members of national contingents are exclusively subject to the jurisdiction of their home country provides a considerable hurdle with regard to any crimes committed in the host country. While the UN can investigate and maybe repatriate the militaries accused of SEA, the accountability of this misconduct is up to the country of origin. Even though the UN has made progress in expanding its administrative investigative capabilities, it lacks the authority to carry out criminal inquiries and prosecutions.<sup>241</sup>

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<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

<sup>240</sup> Rose Freedman. “*UN accountable: a new approach to Peacekeepers and sexual abuse*”. The European Journal of International Law Vol. 29 no. 3. 2018.

<sup>241</sup> Melanie O’Brien. “*Protectors on trial? Prosecuting peacekeepers for war crimes and crimes against humanity in the International criminal court*”. International Journal of Law, Crime and Justice Volume 40, Issue 3, 2012, Pp. 223-241, ISSN 1756-0616, <https://doi.org/10.1016/j.ijlcrj.2012.03.006>.

Report of the Secretary General relate to sex exploitation and perpetration of abuses: U.N. Doc. A/59/782 (2005), U.N. Doc. A/60/861 (2006), U.N. Doc. A/61/957 (2007), U.N. Doc. A/62/890 (2008), U.N. Doc. A/63/720 (2009), U.N. Doc. A/64/669 (2010), U.N. Doc. A/65/742 (2011).

Section 5 of the Bulletin affirms that “If, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution.”<sup>242</sup>.

The exclusive jurisdiction can be seen as a protection for the peacekeepers, in the way that they have granted their rights even though they work in difficult and precarious contexts. However most of the time, this closure turns into impunity for perpetrators. This occurs because frequently contributing countries lack the necessary legal framework to prosecute their peacekeepers at home. In certain nations, various types of rape and other sexual offences are not even considered crimes<sup>243</sup>. For instance, in many nations, marital rape is not a crime. According to some report, forced marriage occurred during the UN operations, in this sense, if the national legislation legally accepts sexual assault of one's own "wife," the offenders avoid any type of punishment.<sup>244</sup>.

The main disciplinary repercussion that the UN can impose is administrative. According to the Zeid Report the suspension of payment can be used as a punishment to ensure individual disciplinary accountability.<sup>245</sup>

The Security Council resolution of 2016 affirms that “if there are credible evidence of widespread or systematic sexual exploitation and abuse” the Secretary-General have the authorization to repatriate the military unit or formed police held responsible.<sup>246</sup>

However, this does not imply that the Secretary-General will waive immunity for either military or civilian troops. Even if the Secretary-General uses his authority to repatriate units, the affected peacekeepers would still only be subject to the authority of their home nation and not the host country.<sup>247</sup>

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<sup>242</sup> United Nations. “*Secretary general's bulletin, regulations governing the status Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission*”. ST/SGB/2002/9 (New York: United Nations, 2002).

<sup>243</sup> Vanessa Kent. Protecting civilians from UN peacekeepers and humanitarian aid workers: sexual exploitation and abuse. edited by Chiyli Aoi et al. “Unintended consequences of peacekeeping operation.” (United Nations University, 2007).

<sup>244</sup> Ibid.

<sup>245</sup> Sabine Lee. Susan Bartels. “*They put a few coins in your hands to drop a baby in you - 265 stories of Haitian children abandoned by UN fathers*”. Journal International peacekeeping. (December, 2019). Available here: <https://theconversation.com>.

<sup>246</sup> United Nation Security council resolution. S/RES/2272 (2016)

<sup>247</sup> Kathleen Jennings. “*The Immunity Dilemma: Peacekeepers' Crimes and the UN's Response*”. E-International relations. Sep 18 2017. Available here:<https://www.e-ir.info/2017/09/18>.

In this way, justice becomes more elusive, for instance, concerning the case of the sex ring where Sri Lankan peacekeepers were involved in Haiti, some sources refer that no one had been prosecuted.<sup>248</sup> Despite of the investigation conducted by the UN personnel, the outcome didn't turn in proof for a process because this had never occurred.

Remarkably, the UN's response to the rising number of sexual crimes committed by peacekeepers resulted in more inquiries but no prosecutions.<sup>249</sup>

In an analysis of the accountability of peacekeeping, Noelle Quenivet identified four different obstacles to the successful result of the national court.

Firstly, sending states are ethically and politically reluctant to admit that some troops of their commander can be accountable for human rights violations. "Any admittance of misconduct among the troops would have a serious negative impact on the national level"<sup>250</sup>. States see participation of peacekeeping operations as a means to gain money rather than protection the population or guarantee the proper conduct of their personnel.

Secondly, it's possible that the definitions of various sexual behaviours, crimes, or the consent age change according to the laws of the states that provide troops. In addition, local law can differ from those that are regulated internationally. For example, the activities that are prohibited in the Bulletin, are not automatically penalized the national level<sup>251</sup>.

Thirdly, dual criminality requirements may prevent prosecution. A state can demand that the actions persecuted in the sending country should be a crime also in the state where they were committed. This provision might prevent the exchange of transcripts between witnesses and victims in criminal cases, among other things, by preventing mutual legal assistance.

It has to be considered that most of the peacekeeping operations are deployed in a conflict situations where the rule of law is on strike, for this could be difficult to provide that sex exploitation is considered an illegal act.

Lastly, due to limited national resources, certain countries may find it prohibitively expensive to hold a trial that involves witnesses and victims from other countries.

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<sup>248</sup>AP news. "UN peacekeepers in Congo hold record for rape, sex abuse". 23 September 2017. Krista Larson, Paisley Dodds.

<sup>249</sup> Noelle Quenivet. The role of the International Criminal Court in the Prosecution of Peacekeepers for sexual offenses. In Roberta Arnold. "Law Enforcement within the Framework of Peace Support Operations" (Brill, 2008).

<sup>250</sup> Ibid.

<sup>251</sup> Noelle Quenivet gives the example of an Italian soldier who was accused of sexually abusing a Somalian civilian during a peacekeeping mission but who was only found guilty by the Italian military authority. This occurred because the Italian military legal code did not provide for prosecution of such offenses.

For this reason, the Sixth Committee's report of August 2006 emphasizes the importance to conduct trials in the host states to increase the possibility to have direct witnesses in the process.<sup>252</sup>

The International Criminal Court is a significant tool that potentially can be used to address the misconduct of peacekeepers. As some scholars underline, "While at first glance it seems possible to haul peacekeepers before the ICC, several impediments obstruct this solution".<sup>253</sup> One is the matter of immunity, which was already covered, other is the types of crimes the ICC prosecutes. The court refers to high level of misconduct as genocide, crimes against humanity and war crimes. Moreover, the ICC's mandate is based on the principle that avoid taking legal action against random or private crimes that fall within the domestic court systems.

A relevant hurdle is the principle of complementarity which obstructed the use of the ICC as a means of persecution. Article 17 of the Rome Statute - which settles the condition of admissibility for a case under ICC - grants national courts primary jurisdiction<sup>254</sup>. This principle had been negotiated during the preparatory work for the Rome statute, to gain the support of the states in order to establish a permanent international criminal court<sup>255</sup>. Indeed, the court could take a case only when the national juridical system is 'unwilling or unable to carry it out'.

In spite of this, some authors such as Melanie O'Brien identify potentially a way to use the ICC as a powerful tool to address perpetrators<sup>256</sup>. The need for an alternative is necessary to improve the possibility that a peacekeeper can be prosecuted for the crimes committed during UN operation. Many NGOs and independent experts underline the low rate of crime prosecutions compared to the high rate of allegations of human rights violations.<sup>257</sup>

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<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> Article 17(a) of the ICC: Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

<sup>255</sup> Mark Klamburg. "*Commentary on the Law of the International criminal court*". (Brussels: Torkel Opsahl Academic EPublisher, 2017).

Indeed, differently the ad hoc tribunals such as the ICTY have primacy principle but they are temporary and not permanent.

<sup>256</sup> Melanie O'Brien. "*Protectors on trial? Prosecuting peacekeepers for war crimes and crimes against humanity in the International criminal court*". International Journal of Law, Crime and Justice Volume 40, Issue 3, 2012, Pp. 223-241, ISSN 1756-0616, <https://doi.org/10.1016/j.ijlcj.2012.03.006>.

<sup>257</sup> Corinna Casaky. "*No one to Turn to. The under-reported of child sexual exploitation and abuse by aid workers and peacekeepers.*" (Save the Children, London: 2008).

Proving that crimes committed by peacekeepers can be classified as crimes against humanity and war crimes is not an easy task, nonetheless, it is not as impossible as could be at first glance.

Starting with the war crime, an accurate reading of article 8(1) of the Rome Statute suggests that there is no absolute requirement that the war crime is committed on a large-scale. It said that “The Court shall have jurisdiction in respect of war crimes *in particular* when committed as part of a plan or policy or as part of a large-scale commission of such crimes”<sup>258</sup>.

The word particular doesn’t imply exclusivity,<sup>259</sup> for example, Hebel and Robison classified it as a guideline rather than a requirement.<sup>260</sup> In this way, the ICC can take in consideration any type of war crimes. The important nexus that has to be identified is that the crime is conducted in an armed conflict context and the perpetrator should be aware of this conflict. Article 8(2)(a) lists all the possibilities in which a war crime is considered as such.

“The ICC has applied the broad interpretation, requiring that ‘the armed conflict must play a substantial role in the perpetrator’s decision, in his or her ability to commit the crime or in the manner in which the conduct was ultimately committed’. However, the ‘armed conflict need not be considered the ultimate reason for the conduct and the conduct need not have taken place in the midst of battle’.”<sup>261</sup>

Concerning this it can be said that most of the peacekeeping operations are deployed in an armed conflict situation. Moreover, it can be argued that one reason which led the militaries to perpetrate sexual exploitation are due to the lack of law regulation consequence to a conflict situation. In addition, women were forced to sell their bodies to make money due to conflict-related poverty and lack of other employment options.

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Sabine Lee. Susan Bartels. “*They put a few coins in your hands to drop a baby in you - 265 stories of Haitian children abandoned by UN fathers*”. Journal International peacekeeping. (December, 2019). Available here: <https://theconversation.com>

Areesha Shahid. “*Peacekeeping Operations and accountability*”. International Humanitarian law and peacekeeping. (DLP forum. May 18, 2022.)

<sup>258</sup> Rome Statute of the International Criminal Court. force on 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, <http://treaties.un.org>.

<sup>259</sup> Meron, T., 1999. Crimes under the jurisdiction of the international criminal court. In: Von Hebel, H., Lammers, J.G., Schukking, J. (Eds.), Reflections on the International Criminal Court. TMC Asser Press, The Hague, pp. 47e55.

Rowe, P., 2006. The Impact of Human Rights Law on Armed Forces. Cambridge University Press, Cambridge.

<sup>260</sup> Von Hebel, H., Robinson, D., 1999. Crimes within the jurisdiction of the court. In: Lee, R.S. (Ed.), The International Criminal Court: The Making of the Rome Statute. Kluwer Law International, The Hague, pp. 79e126.

<sup>261</sup> Melanie O’Brien. “Protectors on trial? Prosecuting peacekeepers for war crimes and crimes against humanity in the International criminal court”. International Journal of Law, Crime and Justice Volume 40, Issue 3, 2012, Pp. 223-241, ISSN 1756-0616, <https://doi.org/10.1016/j.ijlcrj.2012.03.006>.

However, applying this concept to the UN missions is not so simple, and the Court may deny the argument because the crimes in question were committed at the end of hostilities, or after the signing of a peace agreement. This means that there is no jurisdiction under Article 8 of the ICC because they had no connection to an armed conflict.<sup>262</sup>

Furthermore, the author turns the attention to the crime against humanity, in which different, the crime must be committed ‘as part of the widespread or systematic attack’<sup>263</sup>.

Two are the key elements to determine that a crime is a crime against humanity under article 7 of the ICC. First, it needs to be widespread and systematic. Widespread refers to the numerical proportion of the act and systematic is to underline the importance that it is not random but with a precise repeat intention.<sup>264</sup>

The second necessary element to determine a crime under article 7 of the ICC is that the acts had been done ‘with knowledge of the attack’. Meaning that the perpetrator was aware of the situation in which the attack had occurred. It is not necessary to prove the precise details of all the plans, but it is necessary to know the “factual circumstances”.<sup>265</sup>

However, the greatest difficulty in determining a crime by a peacekeeper to constitute a crime against humanity lies in the fact that crimes by peacekeeping personnel ‘tend to be isolated and sporadic acts of military indiscipline or indifference’, rather than part of a widespread or systematic attack.<sup>266</sup>

For the latter reason, it is more possible to accuse a peacekeeper under article 8 of the Rome statute rather than the crime against humanity, because the proof of armed conflict concept is easier to reach instead of widespread and systematic attack elements.

With these premises in mind, it could not be so impossible that a peacekeeper is sentenced under the ICC. What it is necessary to consider is that the ICC is done for high levels of crimes but it doesn’t mean that it can be exclusively used for this purpose. As we already underline, it is necessary to rethink the possible way to sentence peacekeepers for misconduct to increase the perpetration of a violation of human rights. The possibility that the ICC holds jurisdiction over peacekeepers could be a better deterrent for future misconduct.

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<sup>262</sup> Ibid.

<sup>263</sup> Article 7(1) Rome Statute.

<sup>264</sup> In the Merlaine O’Brien analysis, *supra* note 76.

See also: Dixon, R., Hall, C.K., 2008. Crimes against humanity- chapeau. In: Triffterer, O. (Ed.), *Commentary on the Rome Statute of the International Criminal Court*, second ed. C.H. Beck, Hart, Nomos/Oxford, München/Baden-Baden.

<sup>265</sup> This means that the militaries had to know that they were part of the attack against the civilian population, it is not necessary to know the whole plan.

<sup>266</sup> Ibid note 76.

### 3.5 Application of the legal framework

The cases mentioned in this section are essential to illustrate the never-ending challenges that a victim has to face in order to receive compensation.

When the sending state arrives to carry out the legal response to an allegation of human right abuse, this doesn't mean that the process reaches a positive outcome for the victim.

The need for proof and the difficult national law system which are difference one from another creates a grey zone for addressing properly the human right violation during peacekeeping operations.

#### 3.5.1 Legal Actions in Uruguay.

An example is the case of Johnny Jean reported in the document of child sexual abuse by peacekeepers<sup>267</sup>. The facts are the following:

During the MINUSTAH operation, Johnny Jean, a local teenager who was still a child at the time, was sexually assaulted in July 2011 by five Uruguayan militaries serving as peacekeepers in the southern town of Port- Salut. The assault was recorded with a video by the military and following the incident, the victim with the mother denounced the fact through a radio station.

In this story, two are already the exception, one is that the assault was recorded being valid proof for a court process. Secondly, the victim dared to speak about the episode and make it public. The latter is exceptional for several reasons that we have covered in the previous chapter.

The news had provoked a widespread protest near the UN base.<sup>268</sup>

The Uruguay president replayed to the public outrage as: "Although the damage is irreparable, be assured that we will fully investigate the matter and apply the harshest sanctions to those responsible"<sup>269</sup>.

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<sup>267</sup> Miriam Sugranyes. "Litigating Peacekeeper child sexual abuse". (New York: REDRESS and CRIN, 2020).

<sup>268</sup> Uruguay apologises for alleged rape by its soldiers, BBC News, 7 September 2011, available at: <https://www.bbc.com/news/world-latin-america-14817191>.

<sup>269</sup> Ibid.

The UN Mission in Haiti, the Uruguayan Defence Ministry, and Haitian authorities initiated a several investigations into the alleged assault. The result was the repatriation of five soldiers and their commanders in September 2011<sup>270</sup>.

At that point, according to the SOFA agreement the TCC had the responsibility to carry out the process.

In January 2012, the UN officially declared that the convicted soldiers had been released from Uruguay's prison. This was justified due to the incapability to reach the victims and their testimonies. However, according to the victim no one had ever contacted him to provide testimony.<sup>271</sup>

In May 2012, the victim went to Uruguay to testify against the defendants. Following it, the judge decided to a charged with private violence rather than sexual assault.<sup>272</sup> Some experts declare that even if the judge accused the soldiers, it could go further in the prison sentences. The difference lies in the fact that under Uruguayan law, private violence is less punishable than rape or sexual assault. The justification for this sentence was that the “evidence available did not demonstrate penetration sufficient for a criminal charge of rape”.<sup>273</sup>

The defendants received sentences of two years and one month in prison. However, there was any imprisonment and the sentence was suspended because the defence attorney requested an appeal of the conviction and an investigation into Johnny Jean. The defence accused the victim of defamation following the sentencing, claiming that Jean had lied about the abuse.<sup>274</sup>

The case is still ongoing.

The process had many obstacles. The financial support for the trip was only partial, the victim claimed the difficulties in understanding the process due to linguistic difficulties because the translator didn't speak good Creole. One of the lawyers of the victim claimed that the Uruguayan lawyer, who was appointed to the victim, didn't protect the interest of Johnny Jean. He added that rather than seeking victim compensation and justice, the entire case appeared to be focused on the best way to acquit the defendants.<sup>275</sup>

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<sup>270</sup> Uruguay recalls troops over Haiti “sex abuse”, Al Jazeera, 5 September 2011, available at: <https://www.aljazeera.com/news/Americas/2011/09/20119542855682385.html>.

<sup>271</sup> Miriam Sugranyes. “Litigating Peacekeeper child sexual abuse”. (New York: REDRESS and CRIN, 2020).

<sup>272</sup> Ibid.

See also: Centre for Economic and Policy Research, Reduced Charges Against Uruguayan MINUSTAH Troops Latest Example of Lack of UN Accountability, 4 September 2012,

<sup>273</sup> Miriam Sugranyes. “Litigating Peacekeeper child sexual abuse”. (New York: REDRESS and CRIN, 2020).

<sup>274</sup> Ibid.

<sup>275</sup> Ibid.



The involvement of the Haiti government and UN was limited, increasing the difficulty of gathering evidence and thus delaying any attempts to get compensation or retribution for harm caused.

Johnny Jean's case demonstrates that UN soldiers who violate human rights while on mission's profit from the legal and practical obstacles to avoid punishment.

### 3.5.2 Paternity claim

Another important example that will be reported in the case of MINUSTAH operations, is the fathered children by peacekeepers. As discussed in chapter 2, one of the main-long term consequences of the misconduct of peacekeepers is the birth of children.

According to UN data, 111 paternity claims have been made against U.N. peacekeeping missions globally. Only 17 claims from all over the world, including the seven from Haiti, have been verified.<sup>276</sup>

Some women, with the support of lawyers at the Institute for Justice and Democracy in Haiti (IJDH) and Bureau des Avocats Internationaux (BAI) have claimed the paternity of these militaries and asked for financial support.

While some have been successful in demonstrating paternity, very few have been able to obtain any kind of child support.<sup>277</sup>

The response from the UN was a reference to the zero tolerance policy in which the organization condemn SEA and discourage the relationship between peacekeepers and local people. However, the "UN's peacekeeping arm does not take responsibility for financial assistance to children fathered by peacekeepers".<sup>278</sup>

In addition, the UN argues that it cannot "legally establish paternity or child support entitlements" but it declares the willingness to collaborate with the governments of claimed fathers to discuss paternity and support issues.

In spite of this declaration, the reality turns out to be different. In the claim of the mothers against the UN, BAI required the UN investigation and the results of the DNA tests, but the UN's response has been insufficient. In 2018, several claimants after some years received the

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<sup>276</sup> Haitian women press for recognition from UN peacekeeper fathers, Reuters, 1 June 2017, available at: <https://www.reuters.com/article/us-haiti-un-feature-idUSKBN18S4LO>.

<sup>277</sup> Ibid.

<sup>278</sup> Miriam Sugranyes. "Litigating Peacekeeper child sexual abuse". (New York: REDRESS and CRIN, 2020).

results of DNA tests. Some claimants further got aid from the UN, such as funding for the payment of tuition. Nonetheless, the IJDH draws attention to the UN's continued lack of effective support and judicial collaboration. Due to this lack of cooperation, the BAI and IJDH filed a claim against the Haitian courts on the behalf that “having and then abandoning children is not within the official capacity of a UN peacekeeper and therefore [...] this does give a Haitian court jurisdiction to resolve paternity and child support claims”.<sup>279</sup> The case is ongoing, therefore the important point of this dissertation is the demonstration of the never ending impunity for perpetrators and the double suffering for the victims , one when the fact happened and second the incapability of the states and the UN to provide legal and financial support to them.

Many have been the cases, some that reach the court, others that stopped for lack of proof. Here, the intention is to give a general explanation of the main legal framework and the bureaucratic obstacles in providing effective legal support. Unfortunately, too much had been the abuse and the high consequences for the victims but too less had been the response from local authorities, sending states and the UN.

For example, the case of the Sri Lankan peacekeepers accused of at least nine Haitian children, turned into investigations by the Office of Internal Oversight Services (OIOS) from the UN and Sri Lanka national investigation<sup>280</sup>, nonetheless, a successful judicial appeal.

### 3.6 Empower women and rethinking the role of peacekeepers

After examining laws and practices, what appears are three major problems that need to be resolved: the lack of proper binding law; the necessity for expanded extraterritorial jurisdiction; and the implementation of current legal responsibilities.

The lack of a proper sex abuse definition and the lack of a document in which women are at the centre of the debate created a gap in the proper recognition of the issue.

“This problem is exacerbated by failures at some national levels to have laws that comply with international standards on sexual crimes”<sup>281</sup>. It needs international consensus on what

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<sup>279</sup> Ibid.

<sup>280</sup> United Nations. “Accused Members of Sri Lankan Battalion in Haiti to be repatriated as office of internal oversight probes sexual exploitation allegations”. SG/SM/11254-PKO/172. November, 2007. <https://www.un.org/press/en/2007/sgsm11254.doc.htm>.

<sup>281</sup> Rose Freedman. “*UN accountable: a new approach to Peacekeepers and sexual abuse*”. The European Journal of International Law Vol. 29 no. 3. 2018.

constitutes sexual abuse, it needs debates on how those definitions might be upheld in the norms of the military and in domestic legislation.

The discussion at the global level requires a holistic approach to the issue, the debate should include feminist and non-west academics that can give different perspective.

For instance, the book *Rethinking Peacekeeping, Gender Equality and Collective Security* of Gina Heathcote and Dianne Otto criticize gender assumptions presented in the Security Council Resolution 1325 (SCR 1325) on women, peace and security, signed in 2000. They focus on the claim of the definition of women with a ‘white, western and economically privileged women experience’ and in doing this they failed in the opportunity to change perspective.

Looking at the UN webpage and listening to some video conferences presented on their page<sup>282</sup>, the general feeling is a western perspective on the problem. My thought had been better written by the book, presented above, in which they define the implementation of recommendations by the UN as a “calls for first-world solidarity with mostly third-world victims of human rights violations.”<sup>283</sup>

The victimization and the western perspective of women are the main handles to give a better multidimensional approach to the issue.

The resolution reinforced the stereotypical role of women that in conjunction with children are the vulnerable victims that the UN have to protect and the men as only perpetrators.<sup>284</sup>

Among other things, the author identifies that in the resolution the women are instrumentalised to justify the use of force.<sup>285</sup>

A coalition of scholars, inspired by the Women’s International League for Peace and Freedom (WILPF)<sup>286</sup>, drafted a different resolution with the intent to “(re)presenting women as vital participants in conflict resolution and peacebuilding; as empowered rather than solely as victims.”<sup>287</sup>

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<sup>282</sup> An example can be found in the 75 for UN75: Conversation on rethinking peacekeeping. available here: <https://www.un.org/en/academic-impact/75-un75-conversation-rethinking-peacekeeping>.

There is a UN official webpage dedicated to the prevention of sexual exploitation and abuse Available here: <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/response>.

<sup>283</sup> Karen Engle. “*The Grip of Sexual Violence: Reading UN Security Council Resolutions on Human Security*” published in the book: Gina Heathcote, Dianne Otto. “*Rethinking Peacekeeping, Gender Equality and Collective Security*”. (Basingstoke: Palgrave Macmillan, 2014).

<sup>284</sup> Gina Heathcote, Dianne Otto. “*Rethinking Peacekeeping, Gender Equality and Collective Security*”. (Basingstoke: Palgrave Macmillan, 2014).

<sup>285</sup> Ibid.

<sup>286</sup> During The Hague Congress of women in 1915, it established an international committee of women for permanent peace which was renamed the Women’s international League for Peace and Freedom in 1919.

<sup>287</sup> Ibid.

The necessity to empower women is also a central key recommendation in the NGOs reports relating to sex abuse, as we see in the previous chapter the great works that some organization is giving power to women in Liberia.

An interesting dissertation is made by Dannie Otto who argued that violence against women should start from “rejecting conceptions of peace that are framed solely or largely in terms of militarized security”<sup>288</sup>.

We should question the role of peacekeeping, starting with the name. It is paradoxically already thought from a linguistic perspective that those who should keep the peace are armed and allowed to use force. Since they are trained to battle and carry out orders, militaries are not the best candidates to foster an atmosphere of peace and trust among the local people. It is necessary to create a culture in the international system in which arms should neither be the last resort.

It can be argued that the reality is more complex than just avoiding arms, however, in the case of sex abuses I think that disarmament is a huge step towards a concrete solution to the inequality that governs the relationship between local communities and militaries.

It is necessary to reconceptualise peace, avoid humanizing war and create a legal framework in which there is any justification for the use of force. To protect human rights and create an environment in “which all lives are valued and are able to be lived in dignity and equality, emphatically rejecting the idea that peace is merely the absence of war.”<sup>289</sup>

If this is considered an extreme, at least the UN should reduce ritualism in the signature of conventions<sup>290</sup>, where states sign documents to promote particular goals but don't commit for to realization. If the role of the UN is the promoter of human rights, at least it should increase the attention on state implementations.

A change in the high political level of states and international organizations is necessary to be followed by an engagement with the local communities.

The UN could adopt numerous principles, however if states and the military maintain their inflexible attitudes, this doesn't have a good effect on the peacekeeping missions.

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<sup>288</sup> Dianne Otto. “Women, peace and security: a critical analysis of the security council’s vision”. Centre for women, peace, security. 1/2016.

<sup>289</sup> Ibid.

<sup>290</sup> Ibid.

Also see: Hilary Charlesworth and Emma Larking, eds., *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge: Cambridge University Press, 2014).

There could exist many arguments that justify the need for women in peacekeeping operation, for instance, to increase representation and give local communities more support when reporting violations. In addition, improving the presence of women in peacekeeping missions can help but it doesn't resolve the root problem.<sup>291</sup>

Nonetheless, this should not hide the feminist aspiration for peace and disarmament.

“Feminist aspirations for permanent peace have been reduced to seeking women's participation in the decision-making structures of the existing frames of war”<sup>292</sup>. However, it is necessary to change the perspective, also because in spite of the willingness to implement women in the decision-making process “only 38% of negotiators are women, only 6% of mediators are women, and only 6% of signatories are women”.<sup>293</sup> This insufficient result, increases the necessity of an alternative perspective for finding better resolutions.

How could it reach an equal status between local communities and peacekeepers if the latter have guns in their arms?

A UN disarmament, in my opinion, is not only necessary for actually supporting the host countries but also not an unrealistic idea. A major change is required because the prior measures failed to significantly reduce sexual abuse.

### 3.7 Some considerations

This chapter discussed the different theoretical and practical legal challenges in the field of U.N. jurisdiction.

It focuses on the moral agency of the international organization, the direct control over the action and the superior responsibilities as the main handles to properly address the accountability to states taking part in the UN missions.

Analysing the legal framework, it has been demonstrated that the dilemma of immunity turning into impunity is a stigma for the imagining of the UN as a protector of human rights.

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<sup>291</sup> Sabrina Karim and Kyle Beardsley. “*Explaining sexual exploitation and abuse in peacekeeping missions: The role of female peacekeepers and gender equality in contributing countries*”. *Journal of Peace Research*, January 2016, Vol. 53, No. 1 (January 2016), pp. 100-115.

<sup>292</sup> Dianne Otto. “Women, peace and security: a critical analysis of the security council's vision”. Centre for women, peace, security. 1/2016

<sup>293</sup> International Peace Institute. Gender-responsive disarmament, demobilization and reintegration: a woman, peace and security perspective. October 21, 2022. Available here: <https://www.ipinst.org/>

We discuss different cases such as the immunity under the Dutch court for the case of Srebrenica and the UNOSOM troops' impunity for the UN.

Since the beginning, the intent had been to demonstrate the difficulties for victims to access court and remedy which are fundamental rights under many international instruments, such as in article 6 of the ECHR, and article 38 of the ICJ statute.

The documents implemented by the UN are not sufficient to address properly the allegation of sexual exploitation if it does not change the attitude toward the local community. For example, when at the end of the '90 the UN implemented the Blue Helmet code of conduct, military personnel generally believed that it was just “another piece of paper to put in our pocket.”<sup>294</sup>

The implementation of new norms should follow a change in behaviour. The documents must be legally binding if the UN wants a proper implementation.

We discuss the UN hiding behind immunity protection and the lack of collaboration during the process of sending states.

The different laws presented in the different sending states are causing further difficulties to restore the victims, for this reason, it is necessary to create an independent permanent tribunal for crimes over parties.

In the chapter, we tried to report the possibility to incriminate peacekeepers under the International Criminal Court, even if the Rome statute refers prevalently to high violations of human rights. It has analysed Article 7 regarding crimes against humanity, Article 8 war crimes and Article 28 relating to the accountability of the superior commanders.

Concerning persecution of international crimes, the ICC was created as a court of last resort to support national criminal justice systems. Indeed, the Court is allowed to take a case only when national courts are not able or unwilling to do it.

Even if the thought sounds absurd, accusing UN peacekeepers of crime against humanity or war crimes, practically it could be not impossible.

It is essential to give proper responsibility to drastically reduce the culture of impunity which surrounds the UN. Too many cases had been unpunished.

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<sup>294</sup> Paul Higate. “Peacekeepers, Masculinities, and sexual exploitation”. Volume 10 N.1. (United Kingdom, Sage Publications: July 2007). pp. 99-119.

Some authors suggest that it should be necessary to include in the SOFA agreement the possibility of secondary jurisdiction by the ICC. In addition, the ICC should be allowed to investigate the human rights violations in the host country.<sup>295</sup>

The lack of collaboration by the UN, such as in the case of the Haitian mother's paternal claim, creates resistance and a systemic gap that encourages misconduct and does not disincentive it. "The UN should take responsibility for the role they have played in this issue and respond meaningfully to the women filing this lawsuit".<sup>296</sup>

Justice should be a tool for restoring people who have been offended and it should not cover high violations of human rights.

UN peacekeepers cause irreparable harm to their victims, their missions, and themselves when they violate human rights. In order to restore the human dignity of people who have been abused, reparation for these wrong actions is crucial.<sup>297</sup> For doing this, it needs to expand the exclusive liability of sending states to other independent courts.

Due to the inefficiency of the previous implementation by the UN to reduce sex abuse, in this chapter we propose a theory that is based on a radical transformation of peacekeeping. The main focus of the feminist discussion is the reduction or complete elimination of arms for peacekeepers, asking not only for more women's participation in the decision-making process but also to change toward a non-western perspectives and consider women as active actor. I believe that disarmament or at least reduction of armaments is a crucial step that the UN should take regarding the peacekeeping mission. However, up to this point, the sole factor relevant to this subject has been disarmament in the post-conflict context, that is, in the country serving as the mission's host, rather than peacekeeping itself.

Personally, even the argument against disarmament might receive a convincing response, to properly address the problem of sexual exploitation in peacekeeping mission disarmament can be a crucial point in reducing the power that militaries have over the local communities.

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<sup>295</sup> Mark Klamberg. "*Commentary on the Law of the International criminal court*". (Brussels: Torkel Opsahl Academic EPublisher, 2017).

<sup>296</sup> Leonard, Ruby. "*Haitian Mothers of 'Peacekeeping Babies' File Lawsuit Against United Nations*". December 24, 2017. Available here: <https://theowp.org>.

<sup>297</sup> Tom Dannenbaum. "*Translating the Standard of effective control into a system of effective accountability: how liability should be apportioned for violations of human rights by member state troop contingents serving as United Nations peacekeepers.*" Harvard International Law Journal. Volume 51, Number 1 (Winter 2010).





## Conclusion

The primary role of the U.N. peacekeeping should be to act impartially in conflict situations to facilitate the parties to reach a peace agreement. As we demonstrated, the role of the blue helmet in the host country had changed during that time.

As a result, the different tasks required by the militaries had increase the risk of human rights violations. This dissertation demonstrates how the alleged military abuses weren't a single incident of misconduct but rather a pattern of behaviour.

Thus, in order to approach the issue worldwide, the dissertation adopted a variety of theoretical frameworks. The aim was to avoid oversimplification of the problem while considering both potential perspectives of the victims and the perpetrators.

The scope was to demonstrate that the simple prohibition of sex is not the solution.

Through the use of critical theories, we demonstrated that the use of militaries in a vulnerable context should be changed.

It is essential to keep the focus on the topic, avoiding ritualism in implementing resolutions and reducing the normalization of violent behaviour.

The limits of this dissertation were taking merely a theoretical stance on the subject, to fully comprehend the complexities of this issue, appropriate field resources, such as living with the local communities, are required. Despite being secondary sources, the interviews and resources could support a solid starting point for further investigation of the argument.

In the first chapter, we present a timeline of the peacekeeping development, where the first generation militaries were deployed as an observation agency.

The second generation started with the conclusion of the cold war, when the United Nations was once again able to operate as a result of the removal of the US and URSS veto in the Security Council. The new purposes of the peacekeeping mandates were to provide real support to the host states.

Unfortunately, the failures in protecting civilians in the Rwanda genocide and the Srebrenica massacre, led to a new approach to the role of the U.N. in a conflict situation.

The third period saw a change in one of the three principles of Peacekeeping operations. The use of force had been authorized not only in self-defence but also in defence of the mandate. The Brahimi report and the Responsibility to Protect are two recent documents that concern the protection of human rights in peacekeeping missions.

The fifth generation was characterized by a shift in the state's participation in the missions. After the 9/11 terrorist attack, the western countries, such as US and Canada, focus their military force on the so-called war on terror. Due to this change, the U.N. increased the presence of troops coming from the global south.

Later in the historical overview, the chapter turned the focus to the structure of peacekeeping. The Security Council established the mandate for deploying a PKO after properly investigating the situation in the host country.

The Department of Peacekeeping and the SRSG have been described as essential to a good success of the mission.

The discussion focuses on the reasons why states participate in the UN mission. The possibility can be for political and international prestige which they can gain in deploying militaries for the UN. It could be for budget recompense for both individuals and sending states. Rather for security reasons because a state is more favourable to participate if its own safety is at risk.

The main conclusion considered by scholars is that the sending states participate more for self-interest rather than for moral reasons.

Furthermore, we address the importance of training to prevent the misconduct of militaries. We reported three important phases of the training process.

The United Nations provides the materials for the pre-deployment phase, but it is up to the sending states to prepare their troops. The themes range from conduct standards, sexual exploitation, abuse and the respect for human rights including environmental protection. The second step is induction training, and the third is ongoing training, where the U.N. continues to provide the training during the mission with a stronger emphasis on the particular environment.

Some authors claim that too short is time dedicated to pre-deployment training caused by time and budget constraints. Some authors affirm that the lack of proper training can be one of the reasons for human rights violations.

This chapter covers the selection and training components of the peacekeeping mission to provide an overview of all the steps involved in deploying the military in the host country. The intent is to question the efficacy of this agency in selecting the personnel and finding possible responsibility for the negligence in military checks concerning human rights violations.

The many reports provided by the NGOs demonstrate a lack of compliance on the part of the sending state with U.N. standards and the U.N.'s inability to offer adequate human rights screening for the troops before deploying them in the war settlement.

Failure to conduct proper screening had been reported in the case of Bangladesh sending squat police officers who in their home country had been accused of high violation of human rights. However, due to a lack of sufficient conduct screening, they had been permitted to participate in the peacekeeping mission.

In the second chapter, the focus had been the different violations of human rights during peacekeeping operations.

Firstly, the chapter examined how the UN, which is a cooperative agency, can be held responsible for misconduct. The main lack is that the U.N. Charter didn't follow the rapidly evolving peacekeeping operations. This inefficiency creates a legal vacuum in addressing properly the multi-task functions taken by the U.N. personnel.

In spite of this technical absence, the U.N. can be held accountable for numerous violations of human rights.

The chapter discussed the cases *Behrami and Behrami v France and Saramati v. France, Germany and Norway* which reached the High Court of Human Rights.

The latter case served as an illustration of a failed procedure since it was impossible to identify the parties responsible due to a lack of evidence. Consequently, it was impossible to hold the UN responsible of criminal's misconduct due to an unclear legal framework.

Another instance that had been documented involved the UNOSOM mission which was a complete failure concerning the respect of human rights and graves breach of the Geneva Convention in the host state. We reported the horrible behaviour performed by Belgian, Canadian, and Italian troops under the U.N. flag. These allegations included many violations of the right to life, the prohibition on torture and cruel, inhuman and degrading treatment. Involving also a violation of the right to liberty and security.

After discussing the failure of the U.N. in protecting civilians and respecting basic principles of human rights, the chapter highlighted the thesis' central theme, the allegation of sexual abuses. The case of Haiti MINUSTAH and the AMISOM regional deployment militaries in Somalia, are two examples of considering the report of sex abuses by peacekeepers and attempting to illustrate the dynamic that had permitted this type of behaviour.

In the MINUSTAH experience, the different scholars who take into account this situation resume two important considerations relate to sexual exploitation.

Firstly, accepting sexual exploitation in exchange for little financial gain is greatly influenced by poverty.

Secondly, while the U.N. views the repatriation of peacekeepers as a helpful step in addressing the problem, the reports demonstrated that this policy leaves the mothers to raise the child alone and increases their current state of suffering.

We reported different testimonies from women who had been abused or experienced transactional sex. The need to narrate primary experience is necessary to reduce the social distance to the topic, avoiding generalization and dehumanization of the issue.

To give a broad approach the chapter gave attention to the short and long consequences for women exploited by militaries. The negative effects can be from physical and psychological implications to social and economic stigmatization.

The lack of proper counselling and open access support leaves women alone in facing the trauma, increasing the fear of repercussions and stigmatization among the local communities. When a child is born as a result of the abuse, women develop more insecurity and they are more vulnerable to other types of exploitation, especially when the family accuses the mother of violating their honour.

It had been addressed the principal reasons why women decide not to denounce the exploitation which include fear of social stigma, concern for their families' repercussions and preserving the financial gains from the violence.

The lack of proper institutions creates a lack of confidence in denouncing. The violence that went unreported increased the offenders' impunity. The resource provided by Save the Children identifies that there is a lack of community support, children and young people need proper assistance that encourages them to denounce the abuses.

It is necessary to provide proper support and effective knowledge about international remedies for allegations of human rights violations.

In conclusion, the chapter analyses the culture of masculinities between militaries as a key element in justifying violence.

The intention of the chapter had been to start by describing the victim's experience of sexual abuses and then analysing different aspects of the issue. We tried to focus first on the perspective of women including why they couldn't denounce, the main consequences and the first person feelings. After we address the problem from the point of view of militaries, from the culture of masculinities and the necessity to express and demonstrate power.

It has suggested some peacekeeper interviews to get their viewpoint on the situation.

I believe it is important to always have the broadest perspective of one issue.

In this instance, I decided to add the military interviewees since it is crucial to comprehend their viewpoint in order to validate documents and policies that can be effective in preventing this misconduct.

What arises is that peacekeepers feel like victims of the ‘provocative women’. This attitude illustrates the reason why the U.N. should use a suitable training strategy to fill the gap caused by cultural differences. This is because the peacekeepers perceive is not the reality. It is likely true that ladies greet them at the airport, but it is important to determine whether this attitude is a choice or a result of extreme poverty and exploitation in the conflict zone.

For more protection for local communities, some authors propose an imminent culture of punishment for those accused of human rights violations. The U.N. has to create credible and reliable mechanisms of discipline and eliminate any types of justification between personnel.

The third chapter examines the legislation and jurisprudence related to the topic.

In the chapter, it had first been analysed what it meant conceptually for an international organisation to be held accountable for abuses of human rights.

The studies of international law propose the need for moral agents in the community to hold IOs of unlawful acts. The discussion relate to this dilemma is necessary to understand the reasons why the legal frame in this field is still undefined. It can be difficult but not impossible to hold an organisation of states, like the United Nations, accountable for human rights violations.

The moral agent to have responsibility needs direct control of the matter. We report the argumentation that Klabber used to address the problem.

Additionally, we discussed the draft articles on the responsibilities of international organizations which highlight the need of having effective control over behaviour to properly account for an IO of unlawful acts.

Since a peacekeeping operation has different stakeholders is difficult to attribute effective control over the behaviour of militaries. The latter clause can be a challenge to respect because the mission could be under UN mandate but most of the time the militaries respond to national commanders.

We explain the many discussions in defining the real sense of the closure of ‘direct control’. For doing this we take into consideration some court cases, such as the UNOSOM mission,

where the UN had been involved. We discuss the difference between effective and ultimate control.

It had been analysed that the Srebrenica Dutchbat was not considerably guilty because the ultimate responsibility was in charge of the Dutch states due to the direct control over the operation.

In conjunction, it has been discussing the attribution of responsibility to the commanders according to the ICC article 28 concerning the superior order.

The command's flexibility based on circumstances couldn't help in providing direct control over the troops. In this way, if the order is subject to interpretation in case of unlawful acts, it will be more difficult to find direct control and precise responsibility based on the law.

We list the main standard for identifying the liability of the superior commander in case of unlawful acts conducted by subordinates. It needs knowledge of the perpetrator and the reasons to know according to article 28 of the ICC.

The analysis of the Rome statute is necessary to propose another way to improve criminal accountability for the U.N. personnel.

In light of all of these assumptions, the chapter discussed the legal framework required to regulate misconduct.

We discussed the different agreements between sending states and the UN (MoU) and between the U.N. and the host state (SOFA).

In the MOU agreement is settled the duty of sending states to provide appropriate training and the repatriation of commanders if they failed to report misconduct. Even if the MOU is an important legal document, it is not legally binding.

We saw that very few documents bind states during the missions, this includes the Convention of privilege and immunities and the Secretary General's Bulletin.

We analyse the efficacy of the Zero tolerance policy and its weaknesses, starting from the definition of sex exploitation.

Following, it has been discussed the immunity problem concerning the protection of the UN personnel in the court process. The problem of immunity which should guarantee the rights of the U.N. personnel in host countries turns into a tool of impunity for serious violations of human rights.

In analysing this issue, the attention turned to the case of the outbreak of cholera in Haiti during the peacekeeping operation. The U.N. was accused of negligence in providing proper health screening of the militaries before deploying them. Indeed, the cause of the outbreak of

the epidemic was the arrival of peacekeepers from Nepal. The U.N. was accused of negligence and of a delayed response to the situation.

Another case reported to prove the difficulties of accountability due to immunity protection is the case of Srebrenica.

The U.N. replied that the claims submitted were not receivable.

We discussed the problem of jurisdiction which create great difficulties in giving remedy for violence perpetrated against women.

The U.N. has the authority to investigate and repatriate but the legal jurisdiction is exclusive to the sending states.

Nolle Quenivet identified different reasons why states are reluctant and non-collaborative in sentencing their militaries. The motivation can go from ethical and political reasons to economic constraints. The fact that each jurisdiction has its own definition of sex exploitation doesn't guarantee proper protection for the victims.

State parties are required by a sizable number of international and regional instruments to make violence against women a crime:

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol); American Convention on Human Rights (the American Convention); the InterAmerican Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Protocol); and the European Convention on Human Rights (ECHR).

However, not always states take part of these conventions, for this in the chapter we propose a way to bypass the state's jurisdiction through the use of International Criminal Court as a way to reduce impunity and address the problem over parties.

The ICC had been created for high violation of human rights, however, as explained, the articles are not exclusive to crimes such as genocide, crime against humanity and war crimes. In addition, the court could take a case only when the national juridical system is 'unwilling or unable to carry it out'.

The need for an alternative jurisdiction is necessary to improve the possibility that a peacekeeper can be prosecuted for the crimes committed during U.N. operation.

Proving that crimes committed by peacekeepers can be classified as crimes against humanity and war crimes is a challenging task, nonetheless, it is not as impossible as could be at first glance.

Finally, we discuss some practical examples of the difficulties for the victims to seek compensation. As the case of Johnny Jean reaped by a group of Uruguay peacekeepers and the paternity claim from women of the Haiti mission.

Both cases represent the difficulties to provide proof and testimony for the abuses and with an unsuccessful judicial appeal.

By discussing the ongoing peacekeeping effort conceptually, practically, and legally, we attempt to provide a different perspective on it.

The discussions aim to offer a solution through the three processes that are listed below.

Firstly, it is essential to empower women by giving them access to legal and psychological support. The necessity to avoid stigmatization and the fear of reporting are primary issues to address in order to reduce unreported violence.

Secondly, it needs prevention in peacekeeping training. The requirement to penalise the wrongdoing immediately should be a powerful dissuasion tool.

“When the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable” said Melanie O’Brien.

Thirdly, the disarmament of peacekeepers operating with local communities could be a possible solution to reduce the cultural, social and physical distance that allows the militaries to perpetrate abuses.

One of the factors that permit people to abuse women is the military's dominance. If the states are not able to protect women and vulnerable communities from abuse, then the UN should reform the concept of peacekeeping structure.

This thesis highlights the possibility to reform radically the peacekeeping agency. For doing this, we should change the approach of the U.N. to peace.

As some feminist scholars propose, we should start to think of a radical rejection of peace framed only in military security.

I support that since militaries are trained to battle and carry out orders, militaries are not the best candidates to foster an atmosphere of peace and trust among the local people. It is essential to create a culture in the international system in which arms should neither be the last resort.



Rethinking peace is important in order to prevent humanising conflict and establish a legal system where the use of force is not justified.

At the time of writing, a right-wing party took the power in Italy, with attention on security and protection of borders.

It is necessary to protect the human rights of those who flee from difficult situations. We should promote a culture of peace and an environment where people can exercise the right to live in peace and dignity. Now than never it is important to fight for the rights of everyone, women, men, indigenous and queers.

The purpose of this thesis is to enlighten on a significant problem that the United Nations must treat as an emergency.

We should always guard the guardian because they have the power and more way to flee from their responsibilities.

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