Peacekeeping Operations and International Responsibility

Diplomarbeit

Zur Erlangung des akademischen Grades eines Mag. iur. an der rechtswissenschaftlichen Fakultät der Leopold – Franzen – Universität Innsbruck.

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Innsbruck, im August 2020
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Danksagung

An dieser Stelle möchte ich mich bei Herrn Univ.-Prof. MMag. Dr. Peter Hilpold bedanken, der meine Arbeit betreut und begutachtete hat.

Mein besonderer Dank gilt also meiner Familie und Freunden, die mich während der Anfertigung dieser Diplomarbeit tatkräftig unterstützt haben und ihre Zeit zur Korrekturarbeit zur Verfügung gestellt haben.
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I. Introduction

United Nation Peacekeeping was established in the 1940s as an instrument attempting to give support and aid in restoring peace during a conflict. It was developed by the United Nations and has long proven its value all over the world, supporting host countries on their way to regain peace. The responsibility for peacekeeping operations lies with the UN Security Council (UNSC) as the Charter of the United Nations gives it jurisdiction over the maintenance of international peace and security. This includes, among other aspects, the authorization of peacekeeping operations. Their main objective is to provide security and protection, their aid in re-establishing the rule of law in the host countries as well as political assistance and other peacebuilding activities. Over the years, their purpose has evolved, has become multi-dimensional and stretched over many sectors. The UN now regularly deploys peacekeeping operations into conflict zones, supported by both Member States and regional organizations.

As peacekeeping operations have gradually gained more importance, the question of accountability in case of misconduct or act of omission has arisen. Who is responsible when peacekeepers break the law? Is it possible for the United Nations or the involved sovereign countries to face legal consequences? UN peacekeeping operations are multi-dimensional missions which all include various degrees of immunities. Who is held accountable when peacekeepers and organizations enjoy immunity and are there ways to prevent violations of human rights by peacekeepers in the first place?

Despite its success, accountability remains a complex issue, with more allegations of misconduct by peacekeeping troops coming to light over the years. Even though peacekeeping operations are under the supervision and control of the United Nations, the troops themselves are sent from the different Member States. The operations are a unique partnership between international organizations, host as well as troop-contributing countries and therefore, accountability in case of wrongdoing is challenging to define and outline - the allegations in question range from criminal misconduct to civil wrongdoings to cases of omission.

For one thing, all of those offences are committed during a conflict. Therefore, all kinds of legal steps tend to be rather difficult to follow up as legal institutions are usually compromised or do not exist at all. Establishing or rebuilding administrative and judicial systems are one of the significant challenges faced by governments of the respective nations. In addition, countries tend to be uncooperative, guided by political motives or a simple inability to handle misconduct on an international level.

Although there are other ways to establish a peacekeeping mission, this thesis will deal mainly with cases of UN-led “Blue Helmet” missions. Those missions are authorized by the United Nations, more specifically by the Security Council and are led and controlled by the UN itself, namely the above mentioned Department of Peace Operations.
The United Nations, which is the organization carrying most of the responsibility, has been given immunity from prosecution. The UN has offered various solutions that will be looked at in greater detail later on, but none of them seems to be sufficient. Liability is generally attributed to the troop-contributing countries or the host countries, the United Nations, as the institution authorizing peacekeeping operations, is rarely made to deal with the legal repercussion of the people under their command.

Both home and host countries are subject to scrutiny regarding matters of prosecution due to misconduct; an example of which is the massacre of Srebrenica.

Moreover, those peacekeepers who are members of the military forces of their respective states are parts of the state organs but are placed at the disposal of the UN by their states. Further discussions about accountability thus have far-reaching repercussions. States may intend to withdraw or cease their future involvements in peacekeeping operations in fear of prosecution, a concern the UN rarely has to share. This is an aspect, which the United Nations has to consider and evaluate since the organization cannot force states to participate in their operations. Therefore, there is a chance that member states eventually will withdraw or minimize their support.

Laws have also been drafted in an attempt to codify the accountability of both state and international organization, the International Law Association (ILA) and, imperatively, the ILC, the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (Guiding Principles) as well as the International Law Commission’s Draft Articles on the Responsibility of International Organizations. Either codification is attempting to find common ground for international responsibility.

Peacekeeping operations have become a significant part of international security and peace. Therefore, the legal framework has to be taken into account, and changes might be necessary for the missions to succeed in the future.

This thesis will take a closer look at the relationship between the United Nations, any country or organization involved in connections with peacekeeping operations and its repercussions in case of misconduct. It also will offer up examples of past cases where the actions of individuals as well as those of the UN and the affected countries went against the law or withheld the help they were supposed to give as ordered by their mandates.

Peacekeeping missions have developed from mere overseeing missions to closer involvement, be it military support, political assistance or the monitoring of human rights. This leads to more issues and chances to misuse the trust placed into peacekeepers. The law on the subject of peacekeeping mission is not always as clear as it would be required to establish trust and respect between the peacekeepers and the host state. The credibility of peacekeeping missions has suffered, especially with the local population but also the international community. Hence a review of past conduct and subsequent changes in the

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1 Art. 105 UN. Charter.
areas of accountability and supervision has become an essential part of moving forward in deploying multi-dimensional operations worldwide.

There are currently 13 peacekeeping missions ongoing with personnel from over 121 countries. Starting its operations in the 1940s, the organization carried out 71 operations worldwide, the majority of them in Africa. The current peacekeeping personnel includes 69638 troops as well as 12607 civilians. Peacekeeping operations are led by the Department of Peace Operations (DPKO) and are supported by the Department of Operational Support.

This thesis will show the numerous attempts to outline a legal framework since the founding of peacekeeping operations, the UN’s multiple failures to establish such and the struggles of attributing conduct and therefore jurisdiction in a multinational operation equipped with various kinds of immunity deployed into an ongoing conflict.

1. What is Peacekeeping?

1.1. Legitimation

The United Nations, specifically the Security Council, generally has the responsibility to keep international peace and security as Chapter VII of the UN Charter indicates. Art. 39 of the UN Charter states that “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” Therefore, if the Security Council deems all diplomatic conversation or acts useless and sees no other alternative, the UN Charter gives the UN the permission to act to ensure that international peace and security can be maintained or restored.

As mentioned above, the peacekeeping operations are under the control of the UN Security Council and are drawing their legitimation from the UN Charter. However, this right is not explicitly stated anywhere in the Charter. Peacekeeping operations are taking the meaning of Art. 41 and Art. 42 of the UN Charter even further, supporting their claim to act through the so-called “Implied powers doctrine.” Art. 42 of the UN Charter grants the UN Security Council permission to use force if required to restore international peace and security.

The basis for every mission is a mandate from the UN Security Council. They create a general framework for each separate operation, which later is specified by different international as well as regional rules. Examples for this would be the Status of Forces Agreement or the

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2 https://peacekeeping.un.org/en/data, accessed last on 08.06.2020
5 Art. 42 U.N. Charter.
Rules of Engagement. Furthermore, the United Nations have also established the UN Peacekeeping Operations: Principles and Guidelines - “Capstone Doctrine”, a way of codifying the experiences made by years of missions and finding guidelines as peacekeeping operations gain more and more meaning.

Every mandate varies as every conflict demands different actions to be taken. There also have been a handful of resolutions made by the UN Security Council, which generated a more significant meaning in peacekeeping operations. Most useful has been the Security Council resolution 1325 on women, peace and security⁶, the Security Council resolution 1612 on children and armed conflict⁷ as well as the Security Council resolution 1674 on the protection of civilians in armed conflict.⁸

Additionally, the so-called “Blue Helmets” are also bound to human rights as well as international humanitarian law during every one of their missions. They have to be upheld regardless of the mandates created, and every member in each operation has to follow the rules of either law. In addition to international law, the peacekeepers have to follow the law of the host country, as that generally remains applicable.

Moreover, under international law peacekeepers are classified as non-combatants according to the UN Secretary-General’s 1999 Bulletin on Observance by United Nations Forces of International Humanitarian Law and therefore have the right of protection given to civilians in armed conflicts.⁹ They are viewed as similar to humanitarian workers and are not deployed to participate in direct conflicts. Since peacekeepers are allowed to use force in self-defence, their combatant status is, however, questionable. Regardless, they are not culpable under international law for the use of force against combatants, as long as they adhere to IHL.

Finally, there are three other kinds of peacekeeping missions, in addition to the UN-led operations. Firstly there is the UN-authorized mission, which is authorized by a mandate, usually from the Security Council but the operations themselves are managed by a non-UN entity, such as regional agreement, coalitions or lead by a state. UN-recognized operations are not authorized by a UN mandate but have the approval of the international organization.

Lastly, there is the non-UN operation, which is neither mandated nor in any way organized by the United Nations but matches the definition of peacekeeping operations. They are generally deployed and under the control of the host state. All of those operations have evolved over the years and have become a fixture in matters of international security and protection.

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⁹ ST/SGB/1999/13, 06.08.1999, Section 1, 1.2.
1.2. Global Partnership

The extraordinary part of peacekeeping operations is the collaboration between the Security Council, the General Assembly, the UN Secretary as well as the police, military and international civilians in their shared goal of regaining peace and security of both the host country and other Member States of the UN.

It is a unique multi-dimensional cooperation, which both leads to great advantages like bigger financial support, troop strength, resources and broader knowledge. However, it also complicated matters from a legal point of view. As this thesis will show in greater detail, the various immunities, hierarchies and questions of attribution of conduct are complex and entangled in global partnerships.

Another important aspect of said partnership and peacekeeping, in general, is the consent of the host country and all parties’ involved in the conflict. Without such consent, peacekeeping risks becoming a party to the conflict themselves, and that has to be avoided. The goal of each mission is supporting efforts in re-establishing peace and nothing more. It has also proven difficult to uphold the consent with the host state throughout the entire time the operation takes place. Matters are even more complicated by the often lack of consent from local forces or the insufficient cooperation of the government of the host country. Even more so if the latter only consented due to international pressure.¹⁰

1.3. Principles of Peacekeeping

Peacekeeping has evolved and changed over the years, but three principals have been consistent since its implementation. They are specifically mentioned in the UN Peacekeeping Operations: Principles and Guidelines, the so-called Capstone Doctrine. The principles are:

- Consent of the parties
- Impartiality
- Non-use of force except in self-defence and defence of the mandate¹¹

As mentioned before, the consent of the involved parties is crucial for the success of the mission. The same applies to the other two points, as all three together built a unity, principle peacekeeping operations have relied on for years.

Peacekeeping operations also have to remain impartial in every conflict, bound by their orders taken from the mandate that has been implemented. Giving up their neutrality would interfere with their job to secure peace and only draw them further into conflict. It also would jeopardize the cooperation as well as the consent of the involved parties.

Peacekeeping operations have the task to keep the peace not to wage their own war. The UN represents all her Member States, therefore taking part in the actual conflict would go against the principles on which the organization is built upon.

Dag Hammarskjöld talked about this principle in the final report of the UNEF and referred to it as “no intent to influence the military balance in the present conflict and, thereby the political balance affecting efforts to settle the conflict.”

The last guiding principle is the non-use of force except in self-defence and defence of the mandate. Peacekeeping operations are created to support countries on their way to peace and are not intended to be armed troops fighting in a conflict. Regardless, the situations that have arisen in the past forced the members of the operations to use force as a way to defend themselves.

So does Article 2 (4) UN Charter state that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Force, therefore, is only allowed if the Security Council gives permission as well if the situation deems it necessary.

Criticized over the years for its passivity, the UN Security Council drifted further away from its non-use of force principles and gradually applied more and more of the so-called “robust peacekeeping”. This term refers to the change of guidelines presented in the UN mandates. They now gave the permission to use military force to ensure the protection of civilians and support for the host state, evolving from the original no force except in self-defence and defence of the mandate principle.

So defines the DPKO robust peacekeeping as “The use of force by the United Nations peacekeeping operations at the tactical level with the authorization of the Security Council to defend its mandate against spoilers whose activities pose a threat against civilians or risk undermining the peace process.”

This especially came into effect during the 1990s after the UN failed to protect civilians in Bosnia and Rwanda leading the Security Council to authorize mandates that allowed peacekeeping missions to “use all necessary means” to secure peace. This more forceful way of reinstating peace has come with a multitude of issues as the peacekeepers change their primary role of a more passive observer to a more active, more military guiding role.

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13 Art. 2 (4) UN. Charter.
16 UN Peacekeeping Operations: Principles and Guidelines - “Capstone Doctrine”, 34.
1.4. Four Generations

Peacekeeping missions developed four so-called “generations” over the years as their purpose had changed and evolved. Generally, the first operations were classified as generation one, meaning force was only allowed in case of self-defence. The main purpose of peacekeeping lied in observing and offering their help in upholding peace agreements or ceasefire.

With time the Security Council decided to expand the mandate, adding the permission to use force to accomplish the goal of the mission and therefore devising the second generation. Examples for this would be the missions UNPROFOR in former Yugoslavia and UNOSOM II in Somalia.17

Things then took a rather drastic turn after the massacre of Srebrenica in 1995 which compelled the Security Council to add more measures to keep up with the changing security standards. The third generation of peacekeeping then entailed, as mentioned before, the right to protect civilians and uphold the mandate by “all means necessary”. It has led to peacekeeping missions becoming more of peace enforcement, as illustrated in Chapter VII of the UN Charter.

The last and still somewhat new generation is the fourth generation which truly established and outlined the term of robust peacekeeping in an attempt to protect civilians. Also, the so-called ‘peacebuilding’ through a process of political institutionalization and economic liberalization is gaining more importance. Additional crucial aspects are the continuing development and involvement of new technology as well as the specified training of the troops for the “robust peacekeeping”. Therefore, in 2017, the DPKO provided a multitude of countries with pre-deployment materials to ensure all peacekeepers were familiar with the basic principles and guidelines of UN peacekeeping operations.18

2. History of Peacekeeping

Peacekeeping first came into existence during the 1940s, as the UN Security Council authorized the deployment of UN military observers in the Middle East. Their assignment entailed monitoring the Armistice Agreement between Israel and its Arab neighbours. The operations eventually got named the United Nations Truce Supervision Organization (UNTSO). Even though it was the first official operation, the United Nations had performed multiple multi-international operations before and drew experience from them.

Since that time, more than 70 peacekeeping operations have been deployed by the UN, consisting of military, police and civilians from over 120 countries all over the world. The

17 Arnauld, Völkerrecht (2016), 473.
United Nations is the largest multilateral contributor of troops whose purpose is to ensure post-conflict stabilization in the world. As of 31 March 2014, there were more than 118,000 personnel serving on 17 peace operations, leaving only the United States with a higher number of deployed military personnel. All of those are under the supervision of the UN Department of Peacekeeping Operations (DPKO) and are currently dispatched on four continents attempting to fulfil their mandate in protecting civilians and establishing peace and order. This represents a nine-fold increase in UN peacekeepers since 1999, as the deployment of peacekeeping forces has gotten more and more critical. Cooperating with the Department of Peacekeeping Operation is the Department of Field Support (DFS), which offers support and knowledge in the fields of personnel, finance and budget, communications, information technology and logistics. The United Nations does not have its own military force; it depends on the contributions from the Member States, which send their own troops. Even though they are sent by the troop-contributing countries, they serve under the flag of the UN. As of today, more than 3000 UN peacekeepers lost their lives during those missions.\(^{19}\)

In 1988, over 40 years after its creation, UN peacekeepers were awarded the Nobel Peace Prize. The Nobel Committee cited “the Peacekeeping Forces through their efforts have made important contributions towards the realization of one of the fundamental tenets of the United Nations. Thus, the world organization has come to play a more central part in world affairs and has been invested with increasing trust.”\(^{20}\)

### 2.1. Peacekeeping before the Cold War

UN Peacekeeping was born at a time when Cold War rivalries frequently paralyzed the Security Council. It began in the 1940s, mostly with ad hoc deployments of uniformed personnel deployed only when there was an urgent need of intervention. The United Nations wanted to move on from their previous attempts of multinational forces as the League of Nations, often seen as a predecessor to the peacekeeping operations, failed.\(^{21}\)

The peacekeeping operation known today began to develop in the 1950s. Secretary-General Dag Hammarskjöld was a driving force behind it. The reason for the first developments was the phenomenon of decolonization and its consequences. The UN intended to find ways to handle those as efficiently as possible.\(^{22}\)

Peacekeeping is based on the three guiding principles, which will be looked closer at in this thesis, which are still in place today: neutrality, consent and usage of force only in cases of

self-defence. Those principles remain constant through the entire time, even if certain aspects have evolved matching the ever-growing needs of peacekeeping operations.

Peacekeeping at first was mainly limited to maintaining ceasefires and stabilizing situations on the ground, providing support and advice for political efforts and observing the Human Rights situation. In other words, their primary purpose was to resolve the conflict by peaceful means and aid the host country in that same goal.

Those early missions were composed of unarmed military observers as well as lightly armed troops, whose role mostly consisted of observing, reporting and giving advice. It took till the turn of the century to include both the protection of civilians and the prospect of arming peacekeepers.

So was the so-called “Protection Force” of the United Nations, which was deployed in the 1990s in former Yugoslavia without a mandate that would have actually allowed peacekeeping officers to use any kind of force to protect civilians. The UN’s failures both in former Yugoslavia and Rwanda changed the nature of peacekeeping missions and its necessary mandates considerably.\(^\text{23}\) Both instances will be looked at closer in this thesis.

The first two peacekeeping operations deployed by the UN were the UN Truce Supervision Organization (UNTSO) and the UN Military Observer Group in India and Pakistan (UNMOGIP). Either of these missions, which continue operating to this day, was carried out through observation and monitoring and had authorized troop strength in the low hundreds, far fewer than today.

The change in that regard was brought on by the UN Operation in the Congo (ONUC), which was dispatched in 1960. It was the first large-scale mission having nearly 20,000 military personnel at its peak. The UN military observers were, as to this time usual, unarmed. It was only in 1956 when the UN Emergency Force (UNEF I) was deployed successfully in the Suez Crisis that armed forces became the new norm.\(^\text{24}\)

Circling back to one of their first missions, the United Nations Truce Supervision Organization (UNTSO), which was established in 1948, had the task to supervise the General Armistice Agreement signed between Israel and its Arab neighbours. As multiple peace agreements had already failed, the UNTSO was a way to get all sides of the conflict to communicate with each other using the UN as neutral ground. The mission, which is still ongoing until this day, showed the challenges that were to come surrounding peacekeeping operations.

UNTSO was established in the Security Council Resolution 50,\(^\text{25}\) and the mandate tasked the mission with the required assistance in upholding the ceasefire and the General Armistice Agreements. The operation had consisted of 682 Military Observers in 1948 and as of 2015 consists of 151 Military Observers. The mission had countries from all over the world,


\(^{24}\) https://peacekeeping.un.org/en/our-history, last accessed on 17.08.2020

\(^{25}\) S/RES/50, 29. 05.1948.
including France, Belgium, Sweden and the United States from 1948 till 1953 and Canada, New Zealand and Norway afterwards. This mission is still seen as the most outstanding operation in the Middle East. It both succeeded in peace observation and mediation against the impact of the Cold War as well as the fall of Western colonization. Even though UNTSO could not achieve peace in the conflict zones, the experience gained in illustrated both the need to develop peacekeeping missions further and the advantages of having a neutral force capable of mediating between multiple parties during a conflict situation.26

This thesis will also take a closer look at the second mission mentioned above, the United Nations Military Observer Group in India and Pakistan (UNMOGIP) which was established in 1948, based on UN Security Council Resolution 3927 and UN Security Council Resolution 47.28 The mandate, as for this time typically, states that UMOGIP would observe and report, as well as follow up on complaints of the breach of the ceasefire agreement and hand over all their findings to all involved parties. The Security Council attempted with this peacekeeping mission to send support to establish peace and end the conflict between India and Pakistan, which followed the independence of both countries. The countries partaking in this mission were Australia, Belgium, New Zealand, Canada, Finland, Sweden, Uruguay, Chile, Italy and Denmark. As of 2012 countries like Thailand, the Republic of Korea, the Philippines and Croatia have dispatched troops. The mission now has personnel strength of 39 military observers, 25 international civilian personnel and 48 local civilian staff. The initial mission, however, only consisted of three observers and their only purpose was to observe and report. Their mandate did not allow them to use force and therefore limited their capabilities to help to uphold the ceasefire considerably. This peacekeeping mission is still ongoing, but in the end, has little accomplished to deflate the tension between India and Pakistan.29

2.2. Peacekeeping in the Cold War

In the years between 1964 and 1987 was a certain decline in peacekeeping operations; however, a multitude of changes happened regardless. First and foremost peacekeeping missions developed from ad hoc operations to a more permanent, institutionalized practice attempting to contain and offer aid in conflict situations. As the missions developed and new challenges were discovered, the impact of the current political situation on the actions and decisions concerning the operations was significant. They often led to constrains for the United Nations and its objectives. Due to financial and political challenges, the UN only

28 S/RES/47, 21.04.1948
deployed six operations in those six years and as the rivalry between the Superpowers grew, the harder it got for the UN Security Council to establish mandates. A similar effect had the decolonization, which added more and different points of view, challenging the prior dominant Western views. The missions deployed during this time were short-term missions like the Mission of the Representative of the Secretary-General in the Dominican Republic (DOMREP) and the UN Yemen Observation Mission (UNYOM) in Yemen. They started longer-term deployments in Cyprus - UN Peacekeeping Force in Cyprus (UNFICYP). Despite the reduction of missions and obstacles faced by the power struggle, the United Nations could establish peacekeeping operations as regional escalation management.\textsuperscript{30}

The United Nations then started to adjust their approach and extended its former mandates from observing and reporting to complex multi-dimensional missions. These multi-dimensional operations were created to assist in establishing or upholding peace agreements and helping the countries to sustain the regained peace. The core of peacekeeping missions has adjusted to the newly required needs and means, namely dealing with intrastate conflict and civil wars.

### 2.3. Peacekeeping after the Cold War

After the Cold War ended, which impacted politics all over the world, peacekeeping missions considerably increased. Between 1989 and 1994 alone 20 new operations were deployed by the UN Security Council, raising the number of peacekeepers from 11,000 to 75,000. The United Nations, along with the Security Council, went, like the rest of the world, through substantial changes, which translated both in quantity and quality in regards to peacekeeping operations. The mandates of this time stated the key elements of implementing complex peace agreements, stabilize the security situation, re-organize military and police, elect new governments and build democratic institutions. This trend was paused after the failures of Rwanda and Srebrenica. Peacekeeping operations were decreased until 1999, where new missions in mainly Africa were deployed, leading to a new area of UN peacekeeping mission with constantly expanding mandates. 110000 military, police and civilian staff currently serve in 14 peacekeeping missions, representing a decrease in both personnel and peacekeeping missions. They are mandated under Chapter VII of the UN Charter to use all force necessary to ensure civilians safety, contrary to the former observe and report missions. Their tasks moved from a rather passive role to a more active one, now supporting the rebuilding of state institutions, upholding the rule of law, observing political progress or facilitating all kinds of humanitarian assistance.\textsuperscript{31}

The growing presence of peacekeeping operations has led the United Nations, namely the UN Secretary-General to the creation of the High-Level Panel on UN Peace Operations

\textsuperscript{30} ibid, 189-191.

\textsuperscript{31} https://peacekeeping.un.org/en/our-history, last accessed on 17.08.2020
The Panel had gotten the task to review several issues relating to peacekeeping operations and offering up recommendations and solutions to those problems. The key issue seemed to be the ever-evolving mandate, extending the rights and subsequently the extent of the missions. All of this needed new plans, managerial and administrative reforms as the operations were struggling to carry out their mandate and ensure the protection of more and more civilians in more and more dangerous and hostile environments, failing to do so on several occasions. The need for a more robust peacekeeping was first pointed out in the Brahimi Report, after the failure of Rwanda and Srebrenica, which eventually led to the more active role of the UN. In the past, the objective of the DPKO and its missions rarely included human right components as civilian protection was generally not part of the UN Security Council mandate. After reviewing their failures in both Rwanda and Srebrenica, the United Nations began to change and improve their Standing Rules of Engagement for peacekeeping operations.

In summary, the role of the UN-peacekeeping missions has changed considerably in the last few decades. The nature of missions has been altered, and mandates extended. In the first decade of the century, UN Peacekeeping has been deployed all over the world in ways it had not been done before. However, often without a legal framework in place.

3. Accountability of the United Nations

3.1. The Immunity of the UN

The United Nations is an international organization with 193 members all over the world and exercises control over the peacekeeping missions. It has the status of a legal person under the domestic law of its Member States. Therefore, their culpability has been at the centre of the questions as to who has to be held accountable in case of misconduct by peacekeepers.

The UN has been given Immunity by Art. 105, paragraph 1 of the UN Charter, which states “the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.” Within that lies one of the issues in the prosecution of peacekeepers in case of injuries to third parties. It is without a doubt that in the majority of cases, the immunity of the UN is necessary for their ability to function properly. It is somewhat an accepted fact in international law that members of an international organization, especially the United Nations, are not liable for acts of misconduct or omission.

34 Article 104 UN. Charter.
“The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.”  

The General Convention, therefore, extends absolute immunity to the organization. Regardless of this fact, the UN has increased its involvement and stretched the boundaries of peacekeeping missions considerably, and a renewed look at accountability is required. Generally, the UN is concerned with claims of a contractual nature and tort claims and those, as well as all claims resulting from peacekeeping missions have to resolve their case under Section 29 of the Convention on the Privileges and Immunities of the UN (the General Convention). Cases of misconduct (like sexual exploitation and abuse, excessive force) and acts of omission are not generally brought before the UN to be handled.

This usually indicated an administrative approach by the UN, e.g., negotiated settlement. If those attempts were not successful in resolving the case, the next step was through arbitration. Consequently, suits in national courts either had been resolved by settlement or simply had been dismissed on the grounds of immunity.

A similar rule, which applies to sovereign states, also applies to the United Nations. In committing a breach of international obligations, either through an act of omission or misconduct, the organization has to be held accountable. Those unlawful acts have to be attributed to the United Nations, meaning the peacekeeper in question had to have acted under the authority and control of the UN. The chain of command is usually attributed to the UN, having operational control over the troops, which are placed at their disposal by the Member States. Despite this, effective control can also remain with the state, as well as with the UN, which depends on the situation.

This leads to the inquiry if the organ has performed the act in question under the control of the international organization or the sending state. Should an unlawful act be executed based on the instructions of the sending state, the state should take responsibility. However, making this distinction has proven to be rather tricky as certain cases, and their interpretations of the attribution of conduct made by several courts will show. Unlawful acts are the non-consensual use and occupancy of premises, personal injury and property loss as well as any damage that occurred during a mission. Special consideration applies here to missions falling under Chapter VII as combat situations follow those.

Connections between the principle of liability of states and international organizations have been made in the past, and it has been broadly accepted to be applicable to international organizations as well. Paragraph 51 of the model status-of-forces agreement states a way to deal with liability cases by means of a standing claims commission. While such standing

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claim commissions are giving a good point to start, they never actually have been used in practice. Their principle would have entailed three members, one appointed by the UN Secretary-General, one by the government of the host state and a third chairman jointly by the host state government and the UN Secretary-General.  

Like many other attempts to institutionalize the accountability of the peacekeeping missions, this concept also struggles to be established.

3.1.1. Bosphorus Ruling in Comparison to the Behrami Ruling

This case, which was tried in front of the Court of Human Rights (ECHR) introduced a case law on the responsibility of the Member States of international and supranational organizations, which takes a different turn then the Behrami decision, another famous ruling on the question of attribution of conduct.

The Bosphorus case was about the impounding of an aircraft by Ireland based on an obligation in a European Communities (EC) regulation. The regulation itself was based on a resolution created by the United Nations Security Council. The resolution indicated that in case certain vehicles are owned or at least partially owned by citizens from the former Yugoslavia and are found on another nation’s territory, the state was obligated to confiscate the vessel. The planes had been leased from JAT, a Yugoslav airline belonging to Bosphorus Airways, which had its headquarters in Turkey. Bosphorus Airways subsequently brought its case in front of the Irish Courts and eventually to the European Court of Human Rights claiming a violation of property rights and freedom of profession under the European Charter of Human Rights.

The European Court of Human Rights established Ireland’s jurisdiction according to Article 1 of the European Convention on Human Rights, holding Ireland responsible for impounding the aircraft and any violation of the ECHR which was related to those actions. The ECHR stated in this ruling that transferring sovereign power to an international organization was not prohibited but that the responsibility for all acts and omissions of their organs remain with them “regardless whether the act or omission was a consequence of domestic law or of the necessity to comply with international legal obligations.”

The Court followed up on this with “absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention; the guarantees of the Convention could be limited

38 ECHR, 71412/01, 2.05.2007, Agim Behrami and Bekir Behrami v. France, [GC]; ECHR, 78166/01, 2. 05. 2007, Ruzdhi Saramati v. France, Germany and Norway, [GC].
39 ECHR, 45036/98, 30.06.2005, Bosphorus Hava Yollari Turizm ve Ticaret Anonim S iketi v Ireland [GC].
40 Ibid, para. 153.
or excluded at will, thereby depriving it of its peremptory character and undermining the practical and effective nature of its safeguards.\(^{41}\)

The Court concluded the contracting states could not simply transfer their responsibilities to the organization even if they had handed over certain competences. Some sort of balance was required to ensure that future relationships between international organizations and nations could be successful. There had to be a harmony between the international organization’s need for independence and the country's accountability. This led to the so-called equivalent protection. The Bosphorus ruling, therefore, established a suitable legal test to determine what exactly qualifies as equivalent protections in the eyes of the law.\(^{42}\)

The test itself consists of two stages. In the first stage, the Court examines, if an organization provides equivalent protection, causing the presumption to apply. At the second stage, the Court inspects whether that presumption has been rebutted in the specific case that is being handled, because of a manifest deficit in the protection of human rights. In the Bosphorus case, the European Court of Human Rights concluded that, if a contracting state has to uphold community law an encroachment upon fundamental rights is justifiable if the human rights protection afforded by the European Union is found to be equivalent to that of the Convention on Human Rights. The presumption could be applied in this case. The Court also saw no indication why the protection in this claim could be considered manifestly deficient.\(^{43}\)

The Bosphorus judgment indicated that a Member State of an international organization was liable for acts of misconduct and omissions, if no protection regarding human rights offered by the international organization was equivalent to the one achievable by the European Convention or if that protection was deficient.

The Grand Chamber of the European Court of Human Rights then introduced a significant distinction in the case of Behrami and Saramati. This case dealt with the responsibility of individual Member States of the Council of Europe for the actions of their troops in Kosovo (the international security force, KFOR). The mission was based on a resolution of the UN Security Council. In 1999, a violent conflict developed in Kosovo between the Serbian government and Kosovo's largely Albanian population, leading to the intervention of international forces. Kosovo was, at this time, both under the control of the KFOR as well as the United Nations Interim Administration Mission in Kosovo (UNMIK).

Mr. Behrami, one of the plaintiffs in question complained under Article 2 ECHR on his behalf, and on behalf of his deceased son, Gadaf Behrami. Bekir Behrami, Mr. Behrami’s other son, complained about his grave injury. Gadaf Behrami was killed, and Bekir was seriously injured when playing with undetonated cluster bomb units, which had been dropped during the

\(^{41}\) Ibid, para. 154


\(^{43}\) ECHR, 45036/98, 30.06.2005, Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland [GC], para 159 -166.
bombardment by the NATO in 1999. Their complaint was directed at France. Mr. Saramati, on the other hand, applied under Art.5 alone, and in conjunction with Art. 13 of the Convention regarding his extrajudicial detention by the KFOR as well as Article 6 § 1 ECHR. He claimed that he did not have access to a Court and that the respondent states breached their positive obligation to guarantee the Convention rights. His complaint was directed at France, Germany and Norway.\textsuperscript{44}

The key questions in this ruling have been if the case falls under the jurisdiction of the ECHR under Article 1 of the Convention and if the specific acts and omissions by these troops could be attributed to the United Nations or the respondent states. The jurisdiction is only given, if the contracting parties have ratified the Convention and if the misconduct or omissions can be attributed to the respondent parties. Therefore, the first step had been to assess the compatibility ratione personae of the applicants’ complaints with the terms of the Convention.\textsuperscript{45}

The Court attempted to determine compatibility in three steps. At first, the Court examined the mandate given to the KFOR and UNMIK, then if those mandates could be attributed to the United Nations and eventually if the respondent states were also accountable even though the actions in question were attributed to the UN.

The commentary to Art. 7\textsuperscript{46} confirmed the legal issue at hand as in this situation “\textit{the seconded organ or agent still acts to a certain extent as organ of the seconding State or as organ or agent of the seconding organization. This occurs for instance in the case of military contingents that a State places at the disposal of the United Nations for a peacekeeping operation, since the State retains disciplinary powers and criminal jurisdiction over the members of the national contingent is whether a specific conduct of the seconded organ or agent is to be attributed to the receiving organization or to the seconding State or organization.}”\textsuperscript{47}

Therefore, the Court had to inquire whether the UN “\textit{had retained ultimate authority and control so that operational command only was delegated.}”\textsuperscript{48} The Court confirmed at first that Chapter VII allows the UN Security Council to delegate to the Member States and relevant international organizations. Moreover, to retain that control, the UNSC Resolution\textsuperscript{49} had to limit the delegation sufficiently and phrase its objectives precisely. The Court also adds that the relevant power, in this case, was delegable. The Court’s final point was

\begin{footnotes}
\item[44] ECHR, 78166/01, 2. 05. 2007, Agim Behrami and Bekir Behrami v. France, [GC]; ECHR, 71412/01, 2.05.2007; Ruzdhi Saramati v. France, Germany and Norway, [GC].

\item[45] Grabenwarter, Europäische Menschenrechtskonvention, 2008, § 13, Rn. 42.

\item[46] former Art. 5 DARIO


\item[48] ECHR, 78166/01, 2. 05. 2007, Agim Behrami and Bekir Behrami v. France, [GC]; ECHR, 71412/01, 2.05.2007; Ruzdhi Saramati v. France, Germany and Norway, [GC]. para 133.

\item[49] S/RES/1244, 10.06.1999.
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mandating reporting obligations by the leadership of the military presence to the Security Council. This ensured the UNSC’s ability to exercise overall authority and control.\textsuperscript{50}

The Court saw no indication that the respondent states had ultimate authority and control at any point during the incidents in question. Furthermore, the Court confirmed that no orders from the troop-contributing countries interfered with the mandated operation nor had the lack of an existing SOFA affected the operational command of the NATO forces, as suggested by the applicants.

Since the Court attributed the conduct to the UN, the applicants brought up the Bosphorus ruling. It was an attempt also to prove the respondent states’ accountability. As mentioned above, the Bosphorus judgment ruled that contracting parties had to uphold their commitment concerning the Convention, regardless of their other obligations under international law and its consequences. The state always remains responsible for all acts and omissions of its organs. The Court, however, adds that if a state acts in compliance with its membership to an international organization and if the organization in question protects fundamental rights in an equal manner as the Convention does, a state has not departed from the requirements of the Convention.

The applicants, however, argued that “The substantive and procedural protection of fundamental rights provided by KFOR was in any event not “equivalent” to that under the Convention within the meaning of the Court’s Bosphorus judgment, with the consequence that the presumption of Convention compliance on the part of the respondent States was rebutted.”\textsuperscript{51}

The claimants thus based their argument on the Bosphorus ruling, concluding that contracting parties had to retain their obligations regarding the Convention after joining an international organization and argued that this had not been the case. The Court answered their argument by illustrating the essential differences between the two cases.

In the instance of the Bosphorus ruling, the contested act (seizure of the applicant’s leased aircraft) had been carried out by Ireland, the respondent state, on its territory. Therefore, the Court did not consider that its jurisdiction, namely \textit{ratione personae}, was an issue, although the source of the respondent state’s action was an EC Council Regulation which, in turn, applied a UNSC resolution. In addition, so the Court, there was a substantial distinction between the nature of the EU and the UN. As the Court has found, UNMIK was an organ of the United Nations, created under Chapter VII and KFOR was exercising powers, which were delegated under Chapter VII of the Charter by the UNSC. As such, their actions were directly

\textsuperscript{50} Ibid, para 134.
\textsuperscript{51} ECHR, 78166/01, 2. 05. 2007, Agim Behrami and Bekir Behrami v. France, [GC]; ECHR, 71412/01, 2.05.2007; Ruzdhi Saramati v. France, Germany and Norway, [GC], para 150.
attributable to the United Nations, an organization of universal jurisdiction “fulfilling its imperative collective security objective.”

Therefore, the European Court of Human Rights ruled that the applicants' complaints were incompatible ratione personae with the terms of the Convention and thus inadmissible. The Court concluded that the conducts in question were going to be attributed to the United Nations and not the respondent states. The Court based its ruling on the fact that the Security Council indeed had retained overall authority and control, delegated the implementation given by the mandate and had effective control over the troops during the acts in question.

Finally, the Court specified:

“Since operations established by UNSC Resolutions under Chapter VII of the UN Charter are fundamental to the mission of the UN to secure international peace and security and since they rely for their effectiveness on support from member states, the Convention cannot be interpreted in a manner which would subject the acts and omissions of Contracting Parties which are covered by UNSC Resolutions and occur prior to or in the course of such missions, to the scrutiny of the Court o do so would be to interfere with the fulfilment of the UN's key mission in this field including, as argued by certain parties, with the effective conduct of its operations.”

This statement makes it clear that the ruling and subsequent solution described in the Behrami and Saramati case was tailored to a specific conflict between contracting parties’ obligations under the Convention and the law of the United Nations. The Court also mentions Article 103 of the UN Charter, which indicates that the obligations originating in the Charter, including everything pertaining to the obligations from the Security Council Resolutions, overrule other international legal obligations. In the judgment of Bosphorus, the Court was clear on the point that contracting parties cannot evade their responsibility under the Convention by transferring sovereign rights to international organizations. The responsibility for misconduct or omissions by the organs of the organization remains with the relevant state.

When comparing both rulings, the legal issue at hand becomes quickly evident. The ECHR makes the distinction between cases where there was a domestic act or omission so that the Bosphorus case applies and Member States can be held responsible and cases where no such act can be found. Such cases are dismissed as inadmissible on the grounds of ratione personae. As the conduct had been carried out by the respondent state on its territory, the Court has never seen its jurisdiction to be an issue in the Bosphorus ruling. Regardless of the

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52 Ibid, para 151.  
53 Ibid, para 149.  
fact that Ireland based its decision on EU regulation. In Behrami, however, the Court could not contribute the actions and omissions to the respondent states as they did not take place on their territory or under the command of their authorities.\(^5\)

In summary, the Court’s view and established case law is neither clear nor realized. Having said this, the Bosphorus case law did contradict the traditional view in public international law, which stated that members of international organizations could not be held responsible for acts or omissions by these organizations since they enjoy a legal personality distinct from that of their Member States. The applicability of the Bosphorus case law has been clarified to a certain extent. An applicant has to maintain that there is either no equivalent protection of Convention rights at EU level, or that the protection was manifestly deficient. The Behrami case is highly debated, though, as many scholars do not agree with the Court’s decision.

Even though both cases gained particular importance and are constantly referred to, neither could fully establish a clear case law or definition for liability in case of misconduct or omission.

### 3.2. Brahimi Report

In 1999, after the United Nations failure in both preventing the genocide in Rwanda in 1994 and protecting the inhabitants of Srebrenica (Bosnia and Herzegovina) in 1995, two instances this thesis will later take a closer look at, the Secretary-General Kofi Annan established the Panel on United Nations Peace Operations.

The task of the Panel was to assess the flaws and weaknesses of the then existing peace operations system and explore ways of remedying those. The Panel consisted of experts from different fields, whom all were experienced in conflict prevention, peacekeeping and peacebuilding. The Department of Peacekeeping Operations supported the work on the report.

The report, known as the “Brahimi Report”, was named after Lakhdar Brahimi, former Foreign Minister of Algeria, who was the Chair of the Panel. The report requested multiple changes of the institution as well as for the Member States to rethink and expand their commitment. Another point was also to increase financial support. Among those changes, which were illustrated, were clearly defined and realistic mandates. UN peacekeeping operations needed to be adequately prepared and equipped to ensure success in their missions. Further core points were to evolve strategies, quick deployment and extended planning in regards to the operations. The entire report had around 57 recommendations, based on careful and thorough examinations of UN peacekeeping missions.\(^6\)

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\(^5\) Ibid, 534.

\(^6\) Hoppe, Schutz der Menschenrechte, (2004),90.
The report begins with the central idea of the United Nations, the desire “to save succeeding generations from the scourge of war”\textsuperscript{57} and the general need for change. The past had proven that certain aspects of peacekeeping operations and the cooperation with host states had not been thoroughly established and new ways had to be found.

To elaborate an earlier point made before, the necessity for greater and renewed support from the Member States has been a pressing section in the report. Specifically mentioned is political support as well as rapid deployment of troops capable of the so-called robust peacekeeping and a competent peacebuilding strategy. The recommendations in the Bahrimi Panel were made with the principles of the Charter of the United Nations in mind and attempted to honour them. Therefore, they were created in accordance with the following premises:

Firstly, Member States have the responsibility to support the United Nations in their efforts to uphold or establish international peace and security. The United Nations, namely the UN Security Council, on the other hand, has the task to ensure that the mandates constitute as effective and reasonable. Also mentioned is the duty of the UN to both work on their system of conflict prevention and early engagement as well as ensure that there is a constant information flow at Headquarters about current events concerning international security and protection. Additional improvements to the Headquarter are necessary though. The report also indicates a need to ameliorate their plans regarding peacekeeping operations as well as in general, expand their capacity to peacebuilding.\textsuperscript{58}

The necessity of acquiring officers in charge with a certain experience and training and defining their tasks in UN mandates as well as their accountability were other points listed in the report. In addition to this, the report emphasizes the importance of deploying competent personnel and ensures that unsatisfying performance, as well as misconduct, will be handled adequately.\textsuperscript{59}

Building on those principles the report reinforces that the United Nations system, Member States, Security Council, General Assembly and UN Secretariat need to fully commit to peacebuilding operations and develop more effective strategies to fulfil the tasks laid out by the respective mandates. This also applies to measures of prevention of conflicts. All recommendations were made with the Secretary-General Millennium Report\textsuperscript{60} in mind.

Moreover, the Panel recommends that the Executive Committee on Peace and Security (ECPS) is tasked with developing a plan to improve the permanent capacity regarding strategies implemented by the UN peacekeeping missions and submit them to the Secretary-General. Additional changes suggested by the Panel were a “doctrinal shift in the use of civilian police and related rule of law elements in peace operations that emphasizes a team

\textsuperscript{58} Ibid, 1.  
\textsuperscript{59} Ibid, 2.  
\textsuperscript{60} A/54/2000, 27.02.2000.
approach to upholding the rule of law and respect for human rights and helping communities coming out of a conflict to achieve national reconciliation; consolidation of disarmament, demobilization, and reintegration programmes into the assessed budgets of complex peace operations in their first phase.\textsuperscript{61}

The Panel concurs that the three principles of peacekeeping, consent of the local parties, impartiality and the use of force only in self-defence should remain the centre of peacekeeping operations. However, past experiences show that despite peacekeepers abilities to defend themselves, the rules of engagement need to be efficient, allowing peacekeepers to fight back and protect those they were assigned to guard. In other words, the troops need to be prepared and trained to deal with attacks and all challenges that follow such attacks. This applies to peacekeepers, be it police or troops, who witness violence against civilians. Additionally, in instances like that, it is of great importance that the mandate ensures enough resources. The Panel proposes ECPS Information and Strategic Analysis Secretariat (EISAS), which would create and maintain integrated databases on peace and security issues, aiding in gathering information efficiently within the United Nations system. It would generate policy analyses, formulate long-term strategies for ECPS and ensure that ECPS leadership is aware of all crises at all times.\textsuperscript{62}

The Panel adds that it is essential to mobilize the leadership of a new mission as soon as it is realistically probable at United Nations Headquarters, in a way to engage in a mission’s concept of operations and be able to focus on a plan, budget and staffing. Therefore, the Panel recommends that the Secretary-General assembles a complete list of probable representatives of the Secretary-General, including force commanders, civilian police commissioners, their likely deputies and leaders of other sectors of the mission. All those just mentioned should represent a mixture of both gender equality and different demographics.\textsuperscript{63}

The report also states that the first six to twelve weeks following a ceasefire or a peace agreement are often the most delicate ones. This applies to both establishing lasting peace and the prospects of further operations. If the chance is missed, contingency rarely arises again. The Panel suggests that peacekeeping operations, which are deployed by the United Nations within 30 days of the adoption of a Security Council resolution establishing such an operation, and within 90 days in the case of complex peacekeeping operations, should define rapid and effective deployment capacity. The Panel recommends that the United Nations standby arrangements system should invest more time developing and combining both Member States and the United Nations in a working relationship. This would be an attempt to improve the robust peacekeeping mission’s efficiency. This is of great importance, as the Panel emphasized the relevance of robust peacekeeping on multiple occasions. The Panel also proposes that the Secretariat sends a team to ensure each troop is

\textsuperscript{62} Ibid, para. 48 -75.
\textsuperscript{63} Ibid, para. 92-101.
prepared to the United Nations’ satisfaction, including appropriate equipment and successfully concluded training before they are deployed to the country in question. If a unit does not meet the high standards, they are not to be deployed.64

Another recommendation by the Panel is to reinforce the rapid and effective deployment of the so-called “on-call list” of about 100 experienced, well qualified military officers, who were all thoroughly vetted and approved by the Department of Peacekeeping Operations. Teams who are chosen from this list are available for duty on seven days’ notice and would operate on concepts developed at Headquarters. The purpose is to create tactical plans and detailed strategies in advance of the deployment of troops. This would then work as some sort of start-up team established by the Department of Peacekeeping Operations. At the same time, so the Panel, on-call lists of civilian police, international judicial experts, penal experts and human rights specialists need to be put into place. The report states that providing a quickly established but competent peacekeeping unit through pre-trained teams, chosen from that list would increase the odds of a mission’s success and ensure qualified peacekeepers. This would occur, so the Panel, since the peacekeepers would be able to rapidly and effectively establish law and order. In addition to the above-mentioned aspects, the Panel urges the Member States to organize both police and peacekeeping related experts and sort them into groups, which are at the state’s disposal in case deployment to United Nations peace operations becomes necessary. This would be imperative to meet the high demand for civilian police and experts in the fields of criminal justice and the rule of law in peace operations. Furthermore, the Secretariat has to address following needs, so the Panel: to put in place a transparent and decentralized recruitment mechanism for civilian field personnel; to improve the retention of the civilian specialists who are needed in every complex peace operation and to create standby arrangements for their rapid deployment.65

Moreover, the Panel recommends the modification of the system and procedure in place for acquiring peacekeeping personnel through the Secretariat. This would be required to ensure quick deployment. The Panel encourages the Secretary-General to formulate a global logistics support strategy and submit it to the General Assembly. This would go a long way in governing the accumulating of equipment reserves and standing contracts with the private sector for common goods and services. Moreover, the Panel also recommends that the Secretary-General be given authority, with the approval of the Advisory Committee on Administrative and Budgetary Questions to establish a new peacekeeping operation once it becomes evident that an operation is likely to be created. The Secretary-General would then establish the operations in advance of the adoption of a Security Council resolution and not, as usual, afterwards.66

The Panel indicates that regarding peacekeeping operations as a core activity of the United Nations would be the right course of action. Based on this, the majority of its requirements

65 Ibid, para 86-91 and 102-169.
66 Ibid, para 86-91 and 102-169.
should be funded through the organization’s general budget. The report further states that data outlining their recommendation regarding funding the peacekeeping operations. The total cost of the Department of Peacekeeping Operation and related intuitions does not exceed $50 million per annum or roughly 2% of the overall peacekeeping costs. It is seen as necessary to supply those resources for those offices to ensure that more than $2 billion spent on peacekeeping in 2001 are well spent. The Panel, therefore, recommends a proposition by Secretary-General to the General Assembly defining the organization’s requirements. The Panel also concluded that a shortage in certain areas is obvious and problematic. The report lists as an example that it is not adequate to have only 32 officers providing military planning and guidance to 27000 troops in the field, nine civilian police staff to identify, vet and provide guidance for up to 8600 police, and 15 political desk officers for 14 current operations and two new ones, or to allocate just 1.25% of the total costs of peacekeeping to Headquarters administrative and logistics support.  

The Panel also advocates for the creation of the Integrated Mission Task Forces. The Task Force would include officers from different fields based in the United Nations. The plan is to increase the potential of every new mission. A significant deficiency, according to the Panel, is the lack of closer cooperation between people being responsible for political analysis, military operations, civilian police, electoral assistance, human rights, development, humanitarian assistance, refugees and displaced persons, public information, logistics, finance and recruitment. There is currently nothing that would bring all those elements together. Moreover, structural adjustments are needed in other elements of the Department of Peacekeeping Operations, specifically, to the Military and Civilian Police Division, which should be newly categorized into two separate divisions. Another crucial part is the increase in information concerning planning and support at Headquarters. Finally, outside of the Secretariat, Human Rights components of peacekeeping operations need to be emphasized.

Another point the Panel makes is the use of information technology as the critical element of many of the above-mentioned objectives. However, lack of abilities and resources in strategy, policy and practice reduce its effective use. Especially Headquarters struggles with developing a sufficiently strong centre for user-level IT concerning strategy and policy in peace operations.

The Panel indicates that the above-stated recommendations are doable and do not go beyond the capabilities of the Member States. Even though additional resources are likely to be needed to carry out certain aspects of the recommendations, the Panel assures that this is achievable. Regardless, changes are necessary to ensure the success of the operations and prevent incidents like Rwanda and Srebrenica and to take measures to avert peacekeeping operations from failing again. The Panel, therefore, asks the Secretariat to follow the Secretary-General’s initiatives to reach out to the institutions of civil society. The United Nations are a universal organization; therefore, people in all Member States are fully entitled

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67 Ibid, para. 170-197.
68 Ibid, para. 198-245.
69 Ibid, para. 246-264.
to concede this as their organization, and pass judgment on its actions and decisions, to the Panel. This includes the individuals who serve under the flag of the United Nations.

This leads to another issue: the various qualities of the deployed staff. The result is that better personnel are given unreasonable workloads to compensate for those who are less capable. This has to be acknowledged, as otherwise staff, especially the younger ones, will leave. Also, the report states that personnel on all levels have to intervene, starting with the Secretary-General and his senior staff. They have to begin honouring good work and remove unsatisfying performances to uphold the standard needed to accomplish successful peacekeeping missions and avoid wasting resources. Adding to this point, Member States need to reflect on their ways and methods and reconsider certain aspects of their working culture. The Panel ends with a plea of its members: “We — the members of the Panel on United Nations Peace Operations — call on the leaders of the world assembled at the Millennium Summit, as they renew their commitment to the ideals of the United Nations, to commit as well to xv A/55/305 S/2000/809 strengthen the capacity of the United Nations to fully accomplish the mission which is, indeed, it’s very raison d’être: to help communities engulfed in strife and to maintain or restore peace. While building consensus for the recommendations in the present report, we have also come to a shared vision of a United Nations, extending a strong helping hand to a community, country or region to avert conflict or to end violence.”

If the recommendation for this Panel could be fulfilled, the chances are that the rate of peacekeepers committing crimes or any other kind of misconduct could be lowered significantly.

3.3. International Law Commission’s Draft Articles on the Responsibility of International Organizations

In an attempt to codify the issue of liability, the International Law Commission created the Draft Articles on the Responsibility of International Organizations (Draft Articles). Article 1 of the DARIO states that “the present draft articles apply to the international responsibility of an international organization for an internationally wrongful act.”

Defining the legal framework for an international organization has turned out to be a rather complicated and far-reaching issue. Regardless, the DARIOs, taking the Draft Articles of Responsibility of States for Internationally Wrongful Acts as a template, have gained particular importance, both with court and scholars on an international level and continue to be invoked in a multitude of cases.

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70 Ibid, para. 265-280.
So referred the Secretary-General of the United Nations to the principle of state responsibility—widely accepted to be applicable to international organizations—that damage caused in breach of an international obligation which is attributable to the state (or to the organization) includes the international responsibility of the state (or of the organization). It has been applied in a few cases as certain national courts invoked the Draft Articles in case of misconduct by peacekeepers. So have courts in both the case Behrami and Saramati\(^{71}\) in front of the European Court of Human Right as well as the House of Lords in the Al-Jedda case applied the DARIO articles.\(^{72}\) Incidents of peacekeepers violating Human Rights or the International Humanitarian Law have increased; therefore, the amount of those proceedings will likely increase too.

### 3.4. SOFA – Status of Forces Agreement

Another way to regulate peacekeeping operations is the status of forces agreement. A status of forces agreement (SOFA) is an agreement between a host country and a foreign nation for the presence of a military operation in the host country's territory. Mission-specific SOFAs are agreed upon between the UN and a host state following the mandating of a UN peacekeeping operation. SOFA is a primary source of jurisdictional immunities for military personnel, and failure to establish such an agreement can cause issues with immunities UN peacekeeping forces may enjoy. SOFA is a primary source of jurisdictional immunities for military personnel, and failure to establish such an agreement can cause issues with immunities UN peacekeeping forces may enjoy.\(^{73}\)

Another aspect that needs to be highlighted is that different categories of UN personnel need to be covered by the Model SOFA. This raised significant concerns regarding simply extending immunities to further types of personnel and the repercussion of those actions. The UN Secretary-General created it in 1990 as a way to coordinate the legal relationship between a host country and the peacekeeping mission deployed there. The General Assembly requested a model of the status of forces agreement and to make that model available to the Member States.\(^{74}\)

The SOFA agreement lists all rights and obligations and can be seen as evidence of the consent of the host state. This is especially important since consent is one of the guiding principles of peacekeeping operations.\(^{75}\) The status of forces agreement serves as a template for each agreement and has to be accommodated anew for every country. SOFAs are therefore often included, along with other types of military agreements, to establish a comprehensive security arrangement. SOFA’s advantage is that it can be deployed quickly, which is often necessary for the first few months as peacekeeping operations often have to act soon. It is used provisionally during the critical start-up and has done so for the last 30

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\(^{71}\) Agim Behrami and Bekir Behrami v. France, [GC] 71412/01, ECHR 2.05.2007; Ruzdhi Saramati v. France, Germany and Norway, [GC] 78166/01, ECHR 2. 05. 2007, para 29-33.

\(^{72}\) R (on the Application of Al-Jedda) v Secretary of State for Defence [2008] 1 AC 332 (‘Al-Jedda’).

\(^{73}\) Vienna Convention, Article. 37(2), citing Article. 31(1).

\(^{74}\) (A/45/594), 09.10.1990

\(^{75}\) United Nations Peacekeeping Law Reform Project, UN Peacekeeping and The Model Status of Forces Agreement’, School of Law, University of Essex, 2.
years. Despite its usefulness, issues have arisen as SOFA – like many aspects of peacekeeping are not a clearly defined legal framework and have not adapted to the many challenges the peacekeeping missions have faced.

Especially problematic are the third party claims and the limited liability of the UN, which once again shows that regulations that deal with the UN in cases of liability are faulty and need a clear legal framework. Also upholding International Humanitarian Law, International Human Rights Law, as well as local laws and regulations, have been an issue in the last few years.

SOFA has been a great way to establish a specific protocol for new missions. It has not, however, adjusted to the changes the United Nations and their mission have undergone in the last three decades and therefore, continually risks to expose UN peacekeepers and the operations to danger. Nevertheless, SOFA has established itself to be a useful tool in multidimensional operations, especially at the critical stages of a mission, namely the first few weeks or months.

3.5. Memoranda of Understanding (MOU)

The memorandum of understanding (MOU) is a negotiated, formal agreement between the United Nations and a Member State to establish the basic terms and conditions between those parties during peacekeeping missions. It contains administrative, logistics and financial aspects as well as the contribution of personnel, equipment, and services provided by each party. It specifies the United Nations standards of conduct for personnel supplied by the government.

As an example, in 2007, a new draft model MOU was established between the United Nations and the troop-contributing countries. Under this memorandum of understanding the government of a troop-contributing country (TCC) has ten days to carry out an investigation, as it receives information from the UN regarding allegations of misconduct by its troops. In case of failure, the United Nations is authorized to initiate their own administrative investigation, carried out by an Investigation Department, created by the Office of International Oversight Services in New York, as well as Nairobi and Vienna.76

Furthermore, in 1996, the General Assembly authorized measures for determining reimbursements to the Member States for their contributions to peace operations. Hence a memorandum of understanding between the United Nations and the TCC’s is secured for every unit deployed to a peace operation.

The United Nations generally requests major equipment, self-sustainment services, and personnel from the troop-contributing country and the MOU in return lists them. The Member States in question are then entitled to be financially reimbursed. There are over

300 MOUs currently in place and represent approximately $3 billion in equipment, services and troop costs yearly. This is out of a total budget for UN peace operations of approximately $7 billion.\textsuperscript{77}

**3.6. Administrative Tribunals**

The United Nations Administrative Tribunal, which was established in 1949 by General Assembly resolution 351 A (IV) of 9 December 1949 is the UN’s answer to liability. Instead of litigation before various national courts, staff members are supposed to bring their complaints before an administrative tribunal set up by the organization itself. The United Nation is not subject to the jurisdiction of any state it, however, has its internal justice system. The United Nations Administrative Tribunal (UNAT) is an independent body capable of hearing and passing judgment upon applications alleging breach of contracts of employment of staff members of the United Nations Secretariat. It is composed of seven members, now two of whom may be nationals of the same state. The members are appointed by the General Assembly for four years, and then can be reappointed once. Those administrative tribunals are designed and limited to staff members and their legal dispute with the international organization. There has been a reluctant change, though to include non-staff members when they do not have any legal recourse available against the organization elsewhere. The Redesign Panel goes a step further. They propose a wider range of access to people by redefining the staff of the organization. This means that the Panel, in addition to its usual staff, includes former staff and claims made by persons in the name of deceased staff members, regardless of the type of contract they were engaged with.\textsuperscript{78}

The Administrative Tribunals, however, have only remained a good source for internal conflict. Its use in liability cases concerning peacekeeping operations is not given and even has explicitly been excluded both in the past and in future developments of the tribunals.

**3.7. A Convention Draft**

As mentioned above, most instruments concerning liability are only partially useful and require more development. Thus, the United Nations has considered other long-term measures, namely the possibility of a new convention. The Convention’s objective would be to outline and define an international legal framework. The project to establish such a convention is supervised by the Working Group of the Sixth Committee. Legal experts also recommend considering the views of Member States as well as the information stated in the Note of the Secretariat.\textsuperscript{79}

\textsuperscript{77} https://peacekeeping.un.org/en/deployment-and-reimbursement, last accessed on 17.08.2020
\textsuperscript{78} A/61/205, 28.07. 2006
\textsuperscript{79} A/62/329, 11.09. 2007.
The Note refers to the fact that a treaty could go a long way to define and clarify the UN Member’s jurisdiction concerning investigations into violation of human rights by UN personnel. The Convention would have the capability to further draft and develop subjects regarding jurisdiction, investigation and prosecution of criminal acts.80

Among the long-term measures, a project for a new convention represents a possible development in the international legal framework and a way to provide better coordination for both states and organizations involved. Such a convention, however, does not exist at the moment.

4. Accountability of other International Organizations

In order to ensure international peace and security, a multi-dimensional approach by the United Nations has sometimes been necessary, namely involving other international organizations, like the European Union or the African Union, in their work. Even though these partnerships provided numerous advantages over the years, they have also led to frictions and tension between all involved parties.

The greatest challenge was to find common ground for the global international organization and the more local and restricted organizations in order to work together based on the rules of the United Nations. It already became evident during the negotiations for the United Nations Charter that regional organizations demanded a certain influence and involvement and those demands were also made in regards to peacekeeping operations.81

Chapter VIII of the UN Charter outlines the principles of the relationships between the United Nations and the “regional arrangements”, stating in Article 52 UN Charter that “nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security.” In Article 53 UN Charter that “the Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.”

Based on those articles, different types of multi-dimensional organized operations were developed. Three of them are standing out. The first one is the sequential operation; which means one organization is taking over another; parallel operation means that at least two

operations run concurrently and finally the integrated operations. This describes operations where one operation is being run by two organizations.82

Cooperation, in this case, can have multiple meanings. Regional organizations are used as consultants as well as co-deployment in support to already ongoing peacekeeping operations. There is a constant exchange of information between the organizations to ensure maximum efficiency. Joint operations are a way of sharing the responsibility and taking advantage of the different experiences and resources provided by each party as well as splitting the financial burden. Therefore, all involved organizations gain skills and abilities from each other. Furthermore, the regional arrangements are provided with certain legitimacy in regards to peacekeeping operations through the support of the United Nations. The purpose of such inter-organizational cooperation lies in being mutual assets and undermining rivalry or any similar issues.83

After years of uncertainty and no definite legal framework to follow, the United Nations came to the conclusion that establishing such a framework for “cooperation with regional organizations, including common peacekeeping standards, establish modalities for cooperation and transition and, to conduct, where possible, joint training exercises”84 had to be a priority for the Department of Peacekeeping Operations.

Complications in joined missions between the United Nations and a regional organization have occurred on multiple occasions in the past. The cooperation has, as mentioned before, creating questions in regards to of these examples, will be closely examined in this thesis to demonstrate the complexity of such cooperation and the difficulties of reaching a common goal, the rule of law in linked operations, especially related to liability in case of misconduct.

4.1. The European Union and Peacekeeping Missions

The first regional organization that this thesis will go into greater detail in is the European Union. The autonomous organization and its long-standing main partnership with the United Nations as well as their established arrangement are often used as a blueprint for other UN–RO cooperation. The EU itself established the EU’s Common Security and Defence Policy (CSDP) in 1999, which serves as one of its leading institutional defence and crisis management. It is one of the main components of the EU’s Common Foreign and Security Policy (CFSP) and provides the means for the Union to take on a leading role in peacekeeping operations, conflict prevention and matters of international security, involving both civilian and military assets.

84 A/60/696, 24.02.2006, 8.
It was hoped that peacekeeping missions would profit from added resources and experience. Furthermore, both operations are based on consent and support of the host country rather than substitute local authorities. The concern, however, was that the European Union, having such an active role, would lead to less European support for UN peacekeeping operations. This was only partially confirmed as the EU deployed three military operations, namely the Artemis and EUFOR RD Congo in support of MONUC in 2003 and 2006 as well as EUFOR Tchad/RCA in support of MINURCAT in 2008. All three missions supported the UN-led peacekeeping mission. With that, the EU proved that it could be a great asset for peacekeeping missions and the examples led to establishing a way of “lesson learned” as well as gaining more practice. In 2011 the UN Department of Peacekeeping Operations and the Department of Political Affairs opened a joint UN Liaison Office of Peace and Security, creating a permanent presence in Brussels and other aspects of the UN’s institutionalized cooperation with the European Union. The EU and the United Nations have worked closely together in the last decades and have shown the potential in UN – RO partnerships despite some obstacles.  

Delving further into the issues of cooperation between the EU and the UN there has indeed been problems in cases of policy and strategy, as well as instances of competition and politics where the United Nations and European Union did divide in their core aspects. Differences in capacities (financial and military), structure (membership and mandate) and political culture caused tension. Moreover, UN operations have suffered from a lack of European support in peacekeeping missions, particularly as troop contributors. Additionally, both the UN and the EU are confronted with the same kind of problems, varying from weak political support from their Member States to not having an adequate legal framework in place, as well as the matter of consent of the host state, which can be withdrawn at any given time. The EU intervenes less and in far fewer numbers than the United Nations. UN peacekeeping missions are generally far more extensive as they are based on a globally reaching mandate. Most EU civilian missions consist of less than 200 personnel, while the UN missions usually are several thousand. In addition, UN operation duration is longer than EU operations as very few EU missions go above the five-year mark, while UN missions tend to go on for more than a decade. The EU is subjected to tighter political control in comparison to the United Nations. Member States have a bigger say in EU matters than in UN matters. Regardless, in 2014–2015, the deployment of EUFOR RCA as well as EUCAP Sahel Mali, in both cases in parallel with UN operations, allowed for renewed cooperation between the two institutions and a step in the direction of cooperation. 

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In summary, it can be argued that a clear legal framework outlining the rights and obligations of both the UN and the EU has to be established to ensure that future cooperation is possible.

4.2. African Union and Peacekeeping Missions

The African Union is the UN’s most important partner next to the European Union in terms of peacekeeping missions, even though the extent of their support has to be established beyond their current direction. The majority of peacekeeping missions are taking place in Africa, thus investing and strengthening bonds with the African Union is of great interest to the United Nations. For this reason, the UN – AU Joint Task Force on Peace and Security was established by the UN Secretary-General and the African Union Commission. The biggest challenge following the strengthened cooperation is finding the right balance between being equal partners as well as still upholding the hierarchy Chapter VIII of the UN Charter demands. 87

The following example illustrates the above statement, is the UN Multidimensional Integrated Stabilization Mission in Mali in 2012. The mission highlights the developed relationship between the United Nations and the African Union (AU). The AU and the Economic Community of West African States had been forced to act before the UN could intervene to prevent further harm. The UN peacekeeping mission was delayed, and the regional African led International Support Mission in Mali (AFISMA) was sent in place. Within six months the mission was renamed UN Multidimensional Integrated Stabilization Mission in Mali and AFISMA was integrated into it, which clearly showed the strengthened relationship between the United Nations and the AU in regards of the peacekeeping mission. 88

Similar to the European Union, developing and outlining a legal framework for future joint missions between the United Nations and the African Union is necessary. In this case, it is even more urgent, as Africa has been and likely will be the centre of attention for peacekeeping operations and its consequences in the years to come.

5. Individual accountability

All of this leads, among other things, to complex questions in regards to jurisdiction over peacekeepers in the event of misconduct or acts of omission. The issue at hand is complicated as peacekeepers, serving under the flag of the United Nations, enjoy certain

88 Ibid, 854.
immunities depending on their function and status in each mission. The immunity of peacekeepers, as a foreign force currently present in a host state, is well established in international law under the doctrine of state immunity.

Peacekeepers serve under a temporary and specific mandate in opposition to other UN officials. They enjoy certain functionally limited privileges and immunities given by them by article VI of the General Convention. The Secretary-General has the ability to waive immunity, and such a waiver would give the host country the chance to investigate every aspect of the troop-contributing country. The proceedings in such instances are entangled and usually conducted during conflicts, which in turn complicates matters even further.

The primary way of dealing with crimes committed by peacekeeper is to prosecute in the troop-contributing countries. Charging peacekeeping personnel on the grounds of domestic law is rarely satisfactory and seldom actually seen through. Moreover, not all states have legislation about jurisdiction over criminal misconduct committed by their citizens while abroad. Additional issues arise since peacekeeping operations usually consist of a multitude of different people serving in a mission—military, police, as well as international civilians, whom each enjoy different kinds of immunity. There are various divisions, which have different jurisdictions and processes for investigating and punishing the crimes of peacekeepers.

The immunities given to peacekeeping personnel are meant to protect them from the host state, thus ensuring that peacekeepers are capable of carrying out their tasks while on a mission. This principle has its roots in diplomatic immunities. It is not intended to protect peacekeepers from legal proceedings of their committed crimes, but rather to ensure that they can do their tasks given by their mandate without interruptions or interference of the host state. During all of this, one constant issue remains, the United Nations are responsible for defining and evaluating misconduct and following legal proceedings in such matters, while on the other hand also being the organization that employs the peacekeepers in question.

5.1. Civilian Staff

International civil servants make up a certain percentage of peacekeeping operations and receive their immunity from provisions in Article V of the Convention on Privileges and Immunities of the United Nations (CPIUN). This awards them with immunity from the jurisdiction of any national court.

There are two different kinds of immunity, personal and functional immunity. The latter is the more common one, protecting civil peacekeepers from legal proceedings, investigations and prosecution, as long as the act in question falls within their official capacity. It cannot be claimed for acts outside of their official function. Personal immunity is only given to high ranking UN-officers like the head of the peacekeeping missions or the Secretary-General.
For instance, if a peacekeeper runs over a pedestrian on their way to an official function (a meeting or any other sanctioned action) prosecution would be impossible as they would receive immunity regarding their actions. If, however, a pedestrian is run over by a peacekeeper and eventually killed as he is driving home drunk from a dinner party, functional immunity cannot be applied.

Despite the lack of a related mandate, the UN handles its own internal investigations into all allegations of crimes irrespective of the fact, if the peacekeeper’s actions have taken place during their official functions or not. Furthermore, those investigations are conducted to assess if there is ample evidence that would make a cooperation with the local authorities necessary. Therefore, an image of absolute immunity is created rather than a functional one.\textsuperscript{89}

The UN is eventually required to issue an explicit or tacit waiver of immunity. The waiver must be explicit as soon as the crime has been formed as a part of official functions; otherwise, a tacit waiver must be issued. The United Nations has taken it upon itself to determine whether functional immunity applies, despite it being an objective rather than a subjective test. In addition, it has to be noted that in the event of problems with the rule of law, human rights or institutions within the host state the United Nations will not hand over a civilian staff member to local authorities.\textsuperscript{90}

There is no clause allowing host states to declare UN staff persona non grata, thus meaning there is no recourse for the host state if a crime is committed and the UN fails to waive immunity or to comply with the local investigative authorities.

5.2. Military Staff

There are different rules in play for the military staff as they are under the jurisdiction of their home country, which respectively has a contract with the UN. Their home countries will prosecute soldiers there for acts of misconduct. Since the military makes up the majority of peacekeeping missions, as well as being the main perpetrator, the question of their accountability remains one of great importance.

According to the States of Forces Agreement, the protection the military peacekeepers enjoy is given by their home country, which already indicates that only the sending country has jurisdiction in case a crime is committed. The jurisdiction thus usually lies with the home state’s military system. There are several countries though, which do not have a military court system during peacetime. In such cases, prosecution falls to the ordinary courts and

\textsuperscript{89} Freedman, UNaccountable: A New Approach to Peacekeepers and Sexual Abuse, European Journal of International Law, (2018), 967.
disciplinary institution. Consequently, the section of peacekeepers being part of the military is only on very rare occasions subjected to the host state’s jurisdiction.

The host country is banned from examining soldier’s actions during their peacekeeping missions, and the UN is limited to administrative investigations but, only if the sending state fails to initiate investigations after ten days of being made aware of the allegation. Another possibility is presented when the host state court-martials a soldier in situ. The soldier is then immediately handed over to local authorities.\(^9^1\) For various reasons, mainly political ones, the home state is generally not inclined to investigate or press charges, if their peacekeepers commit a crime abroad.

**5.3. Police**

The United Nations sends out teams to select officers from police-contributing countries when a peacekeeping mission takes place. To qualify for those missions generally, three minimum criteria of eligibility have to be given: language, possession of a driver’s license and police experience. The UN team then checks the identities and the serving police status of those applying. This is necessary as, in 2011, over 70 percent of personnel in question did not meet the set standard.\(^9^2\)

However, matching the criteria is not all that is sufficient to join the UN peacekeeping mission. Police officers are required to undergo training in their home state, which is guided by the modules of the United Nations. The personnel also receive training according to the United Nations’ standards of sexual exploitation and abuse training. Regardless, a considerable amount of deployed police officers remain with little or no instruction at all. This once again speaks to the lack of vetting and screening of peacekeepers conducted by the United Nations. The UN Police has two forms. One form is Individual Police Officers (IPOS), and the other one is Formed Police Units (FPUS). Their contributing countries appoint either police force. One key difference between both groups is that IPOS are required to show their curriculum vitae to the United Nations, while FPUS are simply handed over as a unit of 120 to 140 police officers. They are represented in the UN operation and are a unit, which works under the national command. The UN has begun to check IPOS against the data the United Nations has of individuals, who committed misconduct in previous missions. Two specific tools are primarily used: self-attestation and checking against units listed in the Special Representative on Sexual Violence in Conflict’s reports and other sources. Those tactics have not yet proven to be very successful, however.\(^9^3\)

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\(^{91}\) Freedman, UNaccountable: A New Approach to Peacekeepers and Sexual Abuse, European Journal of International Law, (2018), 969.


The policy has been improved since the 1990s. The Security Council resolution 2272 supports the Secretary-General’s decision to repatriate a specific unit if substantial evidence indicates sexual exploitation and abuse (SEA) has been committed in large scale by that unit, or that the unit fails to respond to allegations.94

This leads to a clearer picture of what the United Nations has to accomplish to prevent and deal with matters of misconduct by its peacekeeping personnel. Professor Ai Kihara-Hunt, Associate Professor of the Human Security Program at the University of Tokyo, has proposed various solutions. She suggests in one of her articles that the first step is to employ the right people and ensure they are properly vetted and trained. Alone these actions are likely to reduce the cases of misconduct, especially in cases of SEA, considerably. The next step is gathering information and coming up with a way to share and use that information and putting it together at one central place. Reporting unlawful acts should be accessible to everyone, and those allegations have to be collected and relayed to the appropriate channels. If the personnel fail, a necessary repercussion would be punishment for withholding help.95

The third step, according to Professor Ai Kihara-Hunt, is the protection of victims, witnesses and especially whistleblowers during judicial and disciplinary proceedings. This is followed by the fourth step, which is an investigation. Professor Ai Kihara-Hunt’s recommendation in this regard is to ensure a sufficient procedure in gathering evidence in place so that prosecution afterwards is possible. Professionals are required to reach that goal. Legal clarification, so the professor is the fifth step. The main recommendation is to clarify that neither criminal jurisdiction nor immunity are hindering the prosecution if the involved states are willing to waive immunity and apply the immunity law strictly.96

Transparency through the entire legal proceedings is another major point that is suggested. The professor also proposes that willing states should be able to prosecute without too many barriers in place, whether it be from the UN itself or immunity being wrongfully applied. The final step is following up on allegations. Another remarkable point made was to make information on cooperative and non-cooperative states public. This would be a way to add pressure to non-cooperative states to ensure accountability.97

5.4. Human Rights and Humanitarian Law Treaties

Many cases of misconduct by peacekeepers also violate international law, specifically human rights (ILH) and international humanitarian law (IHRL) treaties. Even though the United

96 Ibid, 81
97 Ibid, 82.
Nations itself is not a member of any international ILH or IHRL treaties, the literature supports the point of view that the organization is bound by customary international humanitarian law and international human rights law. A significant amount of those treaties are ratified by a multitude of troop-sending countries, which deploy peacekeepers in the missions and are therefore applicable. The Torture Convention or four Geneva Conventions would be examples for those treaties.

So states Art. 27 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War that “protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”

The applications of those treaties, however, tend to be rather challenging and complex. The legal proceedings generally depend on many variables. The most important question being, if an armed conflict exists, and if not, what kind of conflict was created and what the implications are. Furthermore, it has to be concluded, if peacekeepers are a party in the armed conflict or not, as well as if the responsibility lies with them, the state or the organization in question. Since peacekeepers are prima facie not parties in armed conflicts implementing IHL in case of criminal accountability of individuals is rarely a valid possibility.

Complementing judging peacekeepers’ actions under the IHL has become even less likely in recent years as robust peacekeeping has gained importance. Newer mandates are sophisticated and allow under Chapter VII of the UN Charter the use of robust force if that force is necessary to reach the goal of the mandate of the mission. IHL would have been applicable in earlier missions, which mostly consisted of observing and reporting rather than enforcing law and order.

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There are different points of view though, as stated in the UN Secretary-General’s 1999 Bulletin on Observance by United Nations Forces of International Humanitarian Law.\(^\text{102}\) The Bulletin implies that, if peacekeeping officers execute more force than the mandate, even considering robust peacekeeping, allows, if a certain threshold of violence is reached, IHL to become applicable. The Bulletin, however, does not offer a legal definition where exactly this threshold lies.\(^\text{103}\)

In addition to this, the ad hoc Committee on the Criminal Accountability of United Nations Officials and Experts on Missions has tried in the past to establish ways to ensure that UN personnel, in case of misconduct abroad, are held accountable for actions that are seen as crimes in the majority of states. As stated above, the question about the nature and borders of international law are discussed once again. The report stated that an isolated act of rape, or a severe sexual assault, committed by a peacekeeper is not serious enough to warrant comparison to crimes against humanity.\(^\text{104}\)

Taking the opposing statement into consideration, it becomes evident that this argument was not entirely agreed upon.

“The counter-argument is that a violent crime, especially one involving sexual exploitation and abuse, committed by a peacekeeper in the context of peacekeeping operations cannot be regarded as merely an ordinary crime. It is a crime committed against a member of the local population, whose safety and security is entrusted to the protection of the peacekeeping operation of which the offender is a member. The gravity of the crime lies in the breach of what is akin to a relationship of trust between the peacekeeper and the members of the community he or she is sent to protect and assist.”\(^\text{105}\)

After this, the suggestion has been made that claiming jurisdiction over civilian personnel by the host state should be an option and that establishing a convention specifically for accountability in regards to peacekeeping missions should be considered. The Secretary-General answered those recommendations as follows:

*The Group is of the view that the assertion of universal jurisdiction on the basis of an extradite or prosecute regime underpinned by a treaty strikes an appropriate balance between the considerations in the argument and counterargument set out above. A State on whose territory an alleged offender is found can extradite him or her to the State of nationality or to another State that has established jurisdiction. But if it does not do so, it must refer the case to its competent authorities for the purposes of prosecution under its domestic laws.*\(^\text{106}\)

\(^{102}\) A/46/185, 23.05.1991.

\(^{103}\) Wills, Continuing Impunity of Peacekeepers: The Need for a Convention, Journal of International Humanitarian Legal Studies 4, 2013, 64.

\(^{104}\) A/60/980, 16.08 2006, para. 54.

\(^{105}\) Ibid, para. 55

\(^{106}\) Ibid, para. 58.
Up until this point, none of these suggestions and recommendations have been implemented in a way that could actually be applied in practice. There are no other international laws outside of armed conflict situations, which would be able to hold peacekeeping personnel accountable while abroad in case of misconduct.\(^{107}\)

### 5.5. International Criminal Court

The International Criminal Court (ICC) investigates and prosecutes individuals charged with the gravest crimes with concern to the international community, including genocide, war crimes, crimes against humanity and the crime of aggression. Therefore, especially after the creation of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia (ICTY), the question has arisen, if peacekeepers could and should be held accountable by the ICC? There are not many compelling reasons, in any case, to indicate just that.

First of all, the ICC only exercises jurisdiction over the four very distinctive crimes mentioned above. The majority of crimes committed by peacekeeping personnel, however, fall under domestic criminal law and rarely under those handled by the ICC. Furthermore, the jurisdiction of the International Criminal Court is limited by the principle of complementarity. Therefore, it only can start legal proceedings if the primary court, be it the host state or, more likely, the troop-contributing country is not capable of doing so themselves. As the ICC is a voluntary treaty body and the sovereignty of states is given, every investigation and prosecution would have to happen with the consent of the involved states.

Additionally, but irrelevant today was UN Security Council Resolution 1422\(^{108}\) which gave immunity from prosecution through the ICC if the person in question was from a state which was not a party of the Rome statute and had participated in an operation authorized by the United Nations. The resolution was not renewed after 2004.

In summary, the ICC is likely not suitable for the investigation and subsequent prosecution of peacekeepers.

### 6. Sovereign States

As mentioned before, peacekeeping missions fall under the control and authority of the United Nations as their sending states hand over their troops to the organization. However, while Chapter VII of the UN Charter puts the Security Council in charge of international security and peace as well as giving them the responsibility to take the necessary steps to

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the UN, a significant part of peacekeeping remains within the discretion of the Member States.

The sovereignty of states is one of the fundamentals of public international law. It extends to the right of the state to exert jurisdiction within its borders and exclude other states’ claims to it. It has, therefore, become a long-standing rule that between two countries, as both present themselves as equals; one country cannot exercise sovereign will or power over the other, Par in parem non habet imperium.\textsuperscript{109} Combining these rules with the complexities of peacekeeping missions involving multiple parties, which all claim sovereignty, has been one of the great challenges the United Nations and each country had to face.

This thesis will look further into the liability of sovereign states, their involvement in peacekeeping missions and the complexity of handing over their troops to the control of the United Nations and retaining a certain degree of control of their officers. Especially since a state’s willingness to provide its troops for a mission may be negatively affected by the potential for facing responsibility for any misconduct or act of omission.

\textbf{6.1. Accountability of Troop-Contributing Countries}

Peacekeeping operations, based on Article 43 of the UN Charter, are partially left to the will of the troop-contributing countries (TCCs) and, therefore, to a certain extent, their responsibility. This has become more of a topic as such missions have increased in significance and have extended beyond their original tasks.

As peacekeeping missions generally consist of troops provided by the Member States but are under the authority of the United Nations, the question of attribution has come up several times. Attempts have been made to create a legal framework on an international basis on multiple fronts. So has the European Court of Human Right ruled in several landmark judgments, influencing courts all over the world with its decisions.

Moreover, the International Law Commission has tried to construct a codification and has published both the Draft Articles on Responsibility of States for Internationally Wrongful Acts (Guiding Principles/ DARS) and the Draft Articles on the Responsibility of International Organizations (DARIO).

Neither Draft Articles are legally binding, but they have been used as a way to understand and interpret the problem at hand. Furthermore, Article 7 DARIO has shaped the way liability of a state or an international organization is seen considerably, especially with its “effective control principle.”\textsuperscript{110}


6.1.1. The Standard of Effective Control

Article 7 DARIO outlines the principle of effective control in general terms, the ILC, however, indicates that this article only applies to acts of misconduct or an act of omission. The article states that “The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct” The question the articles attempts to answer is, if the liability in case of an unlawful act falls under the responsibility of the troop-contributing country or the international organization.\footnote{Draft Articles on the Responsibility of International Organizations, with Commentaries -2011, Responsibility of International Organizations, Art. 7, para. 8.}

The legal basis for effective control has already been developed in 1986 as a consequence of the ruling in the Nicaragua case.\footnote{Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986.} It was further defined in the Bosnian Genocide case in 2007\footnote{Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro),Judgment, I.C.J. Reports 2007}, both rulings were carried out by the International Court of Justice. Hereby, the court concluded that to establish effective control, the conduct in question has to be \emph{directed or enforced}\footnote{Ibid, 14, para. 115} by the state.

The ECHR adopted a standard of “\emph{ultimate authority and control}”\footnote{Agim Behrami and Bekir Behrami v. France, [GC] 71412/01, ECHR 2.05.2007; Ruzdhi Saramati v. France, Germany and Norway, [GC] 78166/01, ECHR 2. 05. 2007, para. 140-141.} in its decision Behrami and Saramati, instead of the former “\emph{overall command and control}”\footnote{Sarooshi, The United Nations and the Development of Collective Security; the Delegation by the Security Council of its Chapter VII Powers,Oxford, Oxford University Press, (2000),163.}, which was introduced by Professor Dan Sarooshi. The conclusion of the Behrami and Saramati case did not bode well with many international lawyers and academics, and many scholars prefer the effective control test over other methods.\footnote{Dirket, Responsibility in Peace Support Operation: Revisiting the proper test for attribution conduct and the meaning of the “effective control” standard, Netherlands International Law Review, (2014), 3.}

6.1.2. Al-Jedda

Building on the Behrami and Saramati judgment, the House of Lords ruled in the case of Al-Jedda that the applicant’s detention was attributable to the United Kingdom and not the United Nations. The case deals with Al-Jedda, who was being held in custody by the United Kingdom’s armed forces in Iraq between 2004 and 2007, without ever receiving a trial or being charged in the first place. The incarceration was seen as a breach of Article 5 (1) of the European Convention on Human Rights by the claimant. The British Government, however, denied that the detention of the applicant fell within the United Kingdom’s jurisdiction. They claimed that he was in custody during the United Kingdom forces participation in a Multi-
National Force authorised by the United Nations Security Council. Therefore, the government maintains, the acts in question were committed under the command of the United Nations and not under British authority.\textsuperscript{118}

The approach of attributing conduct via effective control, as suggested by the ILC Draft Articles on Responsibility of International Organizations was heavily debated in this case. Even though the majority of the lordships agreed with this assessment, there was also the judgment Behrami and Saramati by the European Court of Human Rights that suggested a different path.

Some of the lordships have argued that in cases of delegation, the test, which should be used to settle attribution of conduct, is indeed the \textit{ultimate authority and control} theory as established by the European Court of Human Rights. Although in cases of authorisation, the solution should be \textit{effective control} to define attribution of conduct.\textsuperscript{119} As the case moved up the different instances and then eventually was tried in front of the ECHR, the court had trouble delivering a judgment considering their former decision in the Behrami and Saramati case.

The Grand Chamber followed the ruling of the House of Lords. However, it emphasized that the Security Council Resolution for Iraq in the Al-Jaad case had a very different context and language and that the effective control test was the most efficient way to attribute conduct. Moreover, the European Court of Human Rights subsequently found proof of the state’s exercise of effective control as the detention centre was under the authority of UK forces, and the order regarding detaining Mr. Al-Jaad was also made by the British officer in charge. Even though the whole operation followed a resolution of the Security Council, the state, in this case, the United Kingdom, had command.\textsuperscript{120}

This judgment demonstrated how much disagreement existed between the judges at the European Human Rights Court, as the court moved on from its earlier decision and applied the \textit{effective control standard} instead of the formerly used \textit{overall control standard}. Nevertheless, Behrami and Saramati remain a critical case to understand and apply the attribution of conduct tests.

A closer look at the United Nation’s interpretation of the issue was taken when the ILC submitted the following questions to the UN Secretariat.

\textit{“In the event that a certain conduct, which a member state takes in compliance with a request on the part of an international organization, appears to be in breach of an international obligation both of that state and of that organization, would the organization...”}

\textsuperscript{118} UKHL 58, R (on the application of Al-Jedda) (FC) (Appellant) v Secretary of State for Defence (Respondent)


\textsuperscript{120} ECHR, 27021/08, 07.07.2011, Al-Jedda v. the United Kingdom, Grand Chamber, para. 84-85.
also be regarded as responsible under international law? Would the answer be the same if the state’s wrongful conduct was not requested, but only authorized by the organization?  

The UN Secretary answered those questions as follows:

“As for the third question raised by the commission, we are not aware of any situation where the Organization was held jointly or residually responsible for an unlawful act by a state in the conduct of an activity or operation carried out at the request of the Organization or under its authorization. In the practice of the Organization, however, a measure of accountability was nonetheless introduced in the relationship between the Security Council and member states conducting an operation under Security Council authorization, in the form of periodic reports to the Council on the conduct of the operation. While the submission of these reports provides the Council with an important ‘oversight tool’, the Council itself or the United Nations as a whole cannot be held responsible for an unlawful act by the state conducting the operation, for the ultimate test of responsibility remains ‘effective command and control.”  

The United Nations, therefore, does not see themselves responsible and both the European Court of Human Rights and the House of Lords Court came to the same conclusion as the international organization in this instance. In general, scholars have tended to favour effective control as the appropriate test, at least when it comes to peacekeeping scenarios. Furthermore, it appears that if the effective control standard is used, liability more likely lies with the state, whereas cases that follow the overall control/ultimate authority method liability fall to the United Nations.

6.2. International Law Commission’s (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (Guiding Principles)

The above-mentioned Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARS) have become one of the most significant legal sources if the question of attribution of conduct arises. The Draft Articles are not legally binding though as it is not seen as customary law yet.

Nevertheless, the articles have already been referred to in cases before international tribunals, in arbitral decisions, in-state practice as well as before International Courts. The American Law Journal of International Law even indicates that Draft Articles on Responsibility of States for Internationally Wrongful Acts is currently part of a process of customary law articulation. In addition, article 55 DARS states that the Draft Articles are

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121 A/CN.4/556, 12.05.2005, 4.
122 Ibid, 46.
seen as lex specialis and that the articles have a residual character. If an act of misconduct or an act of omission is already governed by international law, these articles cannot be applied.

The DARS itself write in their commentary that the articles do not define the content of the international obligations, the primary rules do. The codification of the primary rules involves restating most after substantive customary and conventional international law.\textsuperscript{124}

However, the DARS’s are frequently used and referred to by various international and domestic courts as well as by scholars all over the world.

6.3. Accountability of the Host States

The accountability of host states does not play an as important role as the culpability of other involved parties. For one prosecution for peacekeepers in the host state is, as mentioned in this thesis, only possible if immunity is waived, which rarely happens. Otherwise, jurisdiction usually falls to the troop-contributing country. Especially in regards to soldiers, who make up a substantial portion of the peacekeeping operations, are usually protected by the status of forces agreement (SOFA). Furthermore, legal proceedings in a country, which is currently in conflict, tend to be rather tricky as often the rule of law and its institutions are non-existent or fairly damaged. Therefore, the prosecution in the host state is a rather rare and complicated matter.

The United Nations have developed a more substantial interest in local ownership as it both legitimates the operation and strengthens the relationship between peacekeeping troops and the host country. It offers a possibility of self-determination as well as a chance of limiting the influence of outsiders.

This was further reinforced by the actions the UN Security Council has taken in the past. The UN authorized the constitution of a peacekeeping force specifically under Chapter VII but did so without the consent of the host state. This happened for the first time in 1992 in Resolution 794 concerning Somalia.\textsuperscript{125} This action, which goes against the guiding principles of a peacekeeping mission, was followed by sanctioning another deployment of a mission, based on Chapter VII without the consent of the host state in Haiti.\textsuperscript{126}

Local ownership presents apparent benefits for both the UN and the host country but also has its disadvantages. The United Nations sees its issues in the success of the liberalization of post-conflict states as local institutions generally neither have the means nor the capabilities to accomplish that goal. On the other hand, the United Nations are required and mandated to ensure international peace and security, but peacekeeping missions interfere in the right

of a state of self-determination and therefore are in conflict with international law. Local ownership is seen to be a way to reconcile all involved parties and an attempt to make prosecution easier to navigate.\textsuperscript{127}

In conclusion, it can be said that the host country has only limited capability to follow up on misconduct and hold peacekeepers accountable as long as immunity is retained. Local ownership has intriguing possibilities, as well as certain disadvantages. However, accountability would there be the responsibility of the host state, which would offer easier ways to handle legal proceedings.

7. Misconduct and Acts of Omission

Even though peacekeeping missions are embarked upon to restore peace and offer support, there are instances where peacekeepers break the laws instead of upholding them. This thesis will take a closer look at two of the main allegations made against peacekeeping personnel. There are numerous accusations of different crimes, varying from civil matters to criminal acts. Two main sources of misconduct include acts of omission and acts of sexual exploitation and abuse. This thesis will show a general assessment of both breaches of conduct and illustrate each with case examples.

7.1. Act of Omission

An act of omission is a failure to act, which leads to different legal consequences from positive conduct. In criminal law, an omission will constitute an actus reus and demands liability only when the law imposes a duty to act, and the defendant is in breach of that duty. Similar facts apply to tort law where liability will be imposed for an omission only when it can be established that the defendant was under a duty to act.\textsuperscript{128}

There are multiple types of acts of omission. For instance, there is the most significant commission of omission, which means committing result offences such as homicide or assault byways of omission. They are called improper omissions, as it is not entirely about the failure to act, but more for harm caused by such inaction. Another aspect would be the so-called pure omission, which indicates that an individual has not aided another person when they are in a possible life-threatening event, thereby allowing them to suffer. However, this inaction is rarely criminalized. Over the years, a third type of omission has developed that pertains only to a specific group of individuals. These are omissions of medium gravity or the pure omission of a special duty to act.\textsuperscript{129}

\textsuperscript{127} Billerbeck, Local ownership and UN Peacebuilding: Discourse vs Operationalization (2015), 300.
\textsuperscript{128} Card, Card, Cross and Jones: Criminal Law, 2014, 35-36.
This thesis will take a closer look into acts of omission in the cases of Rwanda and Srebrenica.

7.2. Sexual Exploitation and Abuse (SEA)

In recent years, sexual exploitation and abuse committed by peacekeepers has become an increasingly significant concern. The earliest accounts of sexual misconduct by peace operations personnel were reported in the media in the 1990s in Cambodia, former Yugoslavia and Somalia. The issue was further brought to light when the report of the High Commissioner for Refugees and Save the Children was published in 2002\textsuperscript{130} as well as the revelations in 2004 of sexual exploitation and abuse by a significant number of United Nations peacekeeping personnel in the Democratic Republic of the Congo.\textsuperscript{131}

These incidents have indicated cause for serious concern. Peacekeeping was developed after laws and rules for the UN were created. Therefore, no actual legal framework is in place. The General Assembly then adopted resolution 57/306\textsuperscript{132}, in which it requested the Secretary-General to take measures in order to prevent sexual exploitation and abuse in humanitarian and peacekeeping operations. The resolution was innervated after an investigation into the sexual exploitation of refugees in West Africa.\textsuperscript{133} The report described the significant concern regarding sexual assault and sexual exploitation during peacekeeping missions and brought up the question of accountability in such cases.\textsuperscript{134}

In 2003, the Department of Peacekeeping Operations commenced an investigation into reports of sexual exploitation and abuse. It examined cases brought up against five staff and 19 military personnel,\textsuperscript{135} however, due to the challenges inherent in reporting such crimes, as well as a general lack of resources; it is quite possible the true extent was far greater. In fact, as the UN made reporting SEA more accessible, the number of cases began to rise.

Take, for example, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) in 2004. In cooperation with the Office of Internal Oversight Services (OIOS), the UN) investigated 72 allegations.\textsuperscript{136} However, they failed to thoroughly pursue a majority of said complaints, which led to the filing of only 20 case reports.\textsuperscript{137}

\textsuperscript{130}UNHER and Save the Children-UK, Note for Implementing and Operational Partners on Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Findings and Recommendations from Assessment Mission 22 October–30 November 2001 (February 2002), available at: https://resourcecentre.savethechildren.net/node/2985/pdf/2985.pdf, last accessed on 17.08.2020.
\textsuperscript{131}A/59/710 from 24.03. 2005, 1.
\textsuperscript{132}A/RES/57/306, 22.05.2003
\textsuperscript{133}A/57/465, 11.10. 2002, 1.
\textsuperscript{134}A/RES/57/306, 22. 05. 2003, 1.
\textsuperscript{135}A/58/777, 23.04.2004 para. 3.
\textsuperscript{136}Office of the Internal Oversight Services was established in 1994 for the purpose of auditing the United Nation’s performance. It is responsible for all the SEA investigations.
\textsuperscript{137}A/59/661, 05.01.2005, 1.
7.2.1. The United Nations and SEA

The UN defines sexual exploitation as “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”

Sexual exploitation and abuse, in the majority of cases, involves the exchange of sex for money (on average $1-$3 per encounter), for food or jobs. Sexual abuse is defined as “actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”

The United Nations Secretary-General António Guterres adds: “As we serve the world’s people and work for peace and the advancement of humanity, the United Nations must be a source of inspiration and a beacon of hope for all. Together, let us solemnly pledge that we will not tolerate anyone committing or condoning a crime, and in particular, crimes of sexual exploitation and abuse. Let us make zero-tolerance a reality.”

In 2015, the inquiry resulted in a new policy that requires contributing countries to verify that every peacekeeper sent has not committed, or been alleged to have committed violations of international human rights law and international humanitarian law, nor have they been accused of any other possible violation which ended in disciplinary action through the UN. Despite this, along with the United Nations’ zero-tolerance policy, the volume of SEA cases remains significant.

The Zeid report states that in 2004 alone, the Department of Peacekeeping Operations received a total of 105 allegations. Of those 105 allegations, 16 were against civilians, nine were against civilian police, and 80 allegations were made against military personnel. Around 45% of all accusations were related to sex with persons under the age of 18 years, and 13% dealt with sex with adult prostitutes. In addition, allegations of rape and sexual assault make up 13% and 5%, respectively. The remaining 6% are linked to other forms of sexual exploitation and abuse as defined in the 2003 Secretary General’s bulletin.

The UN has released ‘No Excuse’ cards which include a portable statement of UN rules and prohibitions related to sexual exploitation and abuse as well as contact information for reporting purposes. Furthermore, a Special Coordinator on sexual exploitation and abuse was appointed in 2016.

International organizations are now assuming functions similar to those of states. They have gained a rather large role in international work; however, current laws provide little

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139 A/59/710, 24.03.2005, 7-8.
142 A/59/710, 24.03.2005, 9.
opportunity for seeking damages and punishment. As long as no agreements like the Memoranda of Agreement or Status of Force Agreements have been signed holding peacekeepers accountable is challenging at best.

As mentioned before, civilian staff are usually immune from prosecution for any actions that occur during their official functions as peacekeepers, and soldiers generally remain under the jurisdiction of their home states for any crimes committed while deployed on peacekeeping missions. The emphasis, however, is placed on official function as peacekeepers. It could be argued that crimes like sexual assault, which are committed while on a mission, are not considered part of the individual’s official assignment. Therefore, civilians could be handed over to the local authorities. However, in reality, this rarely happens.\footnote{Freedman, UNaccountable: A New Approach to Peacekeepers and Sexual Abuse, European Journal of International Law, 29.3 (2018), 963.}

Accountability delivered through the intervention of a state to enact justice is, therefore, more theory than actual legal practice. Since peacekeeping missions are only deployed in situations of conflict, many of the local authorities are not capable of initiating an investigation, even if they were so inclined.

There are also issues of political resistance, as well as challenges that arise in countries that simply do not have adequate laws against sexual assault and sexual exploitation in place. Additionally, the UN often neglects to follow up on allegations. They are ineffective in taking the necessary steps to ensure criminal proceedings.\footnote{Kihara-Hunt, Addressing Sexual Exploitation and Abuse The Case of UN Police – Recommendations, Journal of International Peacekeeping 21 (2017) 62.}

Thus, the UN tries to prevent such acts from being committed in the first place. Therefore, they have established three categories when seeking to address sexual abuse by peacekeepers: prevention, enforcement and remedial action.\footnote{https://peacekeeping.un.org/en/standards-of-conduct, accessed on 05.06.2020.}

Prevention: The United Nations, in cooperation with the Member States, attempts to prevent sexually related crimes from the outset. Personnel is trained on the UN Standards of Conduct, both prior to and after deployment, and the public in each Member State is informed via brochures, poster campaigns, or meetings with community groups. The UN also details restrictions of movement, curfews, a requirement that soldiers wear uniforms outside barracks, the designation of off-limits areas, the addition of non-fraternization policies, and increased patrols around high-risk areas.\footnote{https://conduct.unmissions.org/prevention, last accessed on 17.08.2020.}

Enforcement: the UN reacts to accusations of misconduct and investigates the alleged violations of the United Nations Standards of Conduct. In reality, as mentioned above, this rarely occurs when allegations surface.
Remedial action: In 2007, the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse was utilized by the General Assembly, offering assistance and support in case of sexual abuse and exploitation.

7.2.2. Zeid Report

Adding further research to the topic, the Zeid Report was released in March 2005, in order to suggest a different strategy for putting an end to SEA cases committed by peacekeepers. His Royal Highness Prince Zeid Ra’ad Zeid Al-Hussein, Permanent Representative of Jordan, acted as an adviser on this report, as he is a permanent Representative of a major troop- and police-contributing country as well as a former civilian peacekeeper. The report was titled, “A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations.”

The report lists four major points. It highlights the current rules on standards of conduct, outlines the investigative process, as well as indicating the need for organizational, managerial, and command responsibility. It also lists individual disciplinary, financial, and criminal accountability, as one of its major issues.\(^{147}\)

The Zeid report starts with the Rules of the Organization, which, as mentioned before, touch upon the problematic fact that each peacekeeping mission consists of people from multiple different divisions, adding a layer of complication.

Despite this, the report recommends that the Secretary-General’s bulletin on special measures for protection from sexual exploitation and sexual abuse is applied to all sections of peacekeeping, regardless of their status.\(^ {148}\) The Secretary-General’s bulletin points out that the United Nations Staff Regulations and Rules define clearly which actions are not in compliance with the law.\(^ {149}\)

Furthermore, the report argues that the Head of Department, Office, or Mission has the responsibility to do everything in his/her power to prevent sexual exploitation and sexual abuse, and should take appropriate measures to achieve this goal. An essential step in this process would include making the staff aware of the Secretary-General’s bulletin on special measures for protection from sexual exploitation and sexual abuse and ensuring they adhere to the bulletin’s suggestions in cases where there is reason to believe that any of the above-stated rules have been violated.\(^ {150}\)

Also, United Nations officials need to inform those entities or individuals of the standards of conduct listed in the Secretary-General’s bulletin and ensure that a written acceptance of

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\(^{147}\) A/59/710, 24.03. 2005,2.  
\(^{148}\) Ibid, 4.  
\(^{150}\) A/59/710, 24.03. 2005, 21.
those standards is received. The standards are then enforced under the organization’s disciplinary procedures.\textsuperscript{151}

Circling back to the Zeid report itself, it mentions explicitly hiring an expert in military law to ensure the investigations are conducted in a way that complies with national laws. This would make on-site court martial possible, which in turn would make the proceedings easier.\textsuperscript{152}

With regard to organizational, managerial, and command accountability, there is a section of the report which mentions the importance of training and other measures in preventing even more cases of SEA and concludes that the United Nations should offer some form of assistance to the victims. In addition, it asserts that people in charge of the operations should be removed if they fail to take the necessary steps to prevent or following up on allegations of sexual misconduct. The report also suggests introducing specific procedures by the Secretary-General in handling such cases. Lastly, the report underscores the financial accountability of the United Nations peacekeeping personnel in cases of sexual assault or exploitation.\textsuperscript{153} The report takes this assertion a step further by demanding the issuance of DNA tests to establish paternity, ensuring that peacekeeping personnel will be required to provide child support to any children conceived through SEA – the so-called “peacekeeper babies.”\textsuperscript{154}

The report also states that the status-of-forces agreement assumes that the Secretary-General has confirmation from a sending country that it will exercise criminal jurisdiction over its troops in return for the immunity given to them by the host states, as presented in the status-of-forces agreement. However, such assurances are no longer part of the cooperation between host state and peacekeeping operations. Furthermore, the report illustrates that the founders of the United Nations did not intend for the peacekeepers to have the privileges and immunities they have today, which more or less protect them from prosecution. As mentioned before, the host countries rarely have an intact judicial system, and therefore waiving immunity in those jurisdictions does very little to help the prosecution along.\textsuperscript{155}

\textbf{7.2.3. Response to SEA}

The UN did attempt to make specific changes, as requested in various reports. For starters, the first resolution\textsuperscript{156} the Security Council adopted acknowledged that the UN needed to remove their peacekeeping operation’s managers and commanders if the actions of themselves or the people under their command went against established rules. They

\textsuperscript{151} Ibid, 10.  
\textsuperscript{152} Ibid, 4.  
\textsuperscript{153} Ibid, 5.  
\textsuperscript{154} Ibid, 6.  
\textsuperscript{155} A/59/710, 24.03.2005, 6.  
\textsuperscript{156} S/RES/2272 (2016), 11.03.2016
emphasised the importance of upholding the law, and that any case of sexual exploitation or abuse would not be tolerated.

Shortly after the release of the report, in 2005, the Conduct and Discipline Unit (CDU) was created. It has two central functions, specifically “to advise personnel and mission leadership alike on all matters of conduct and discipline; [and to] ensure the coherence of administrative and disciplinary procedures.”

Those functions are both addressed in the main CDU at headquarters, as well as in specific units, which are part of peacekeeping missions. The tasks of these units include, but are not limited to receiving all allegations of misconduct, making recommendations on investigations, and reporting all serious acts of misconduct to mission heads.

The United Nations has developed two central systems for the investigation of cases of unlawful acts. They established the so-called Board of Inquiry, however, contrary to the name, the Board was not made to deal with allegations of sexual misconduct but rather with the disputing of resolutions involving traffic accidents. Therefore, they were rather quickly overwhelmed by disparate cases.

The other tool they created, as a response to the Board of Inquiry, was the Office of the Internal Oversight Services, created in 1994 to undertake audits on the United Nations. The institution has multiple tasks, which include receiving reports from The Conduct and Discipline Unit in cases of SEA, as well the recording of evidence and the determination of whether there is sufficient evidence to warrant the start of an official investigation.

Eventually, neither system could really work as intended, due most notably to the fact that institutions made for administrative purposes are not prepared to handle criminal cases. They lack experience in conducting criminal investigations, especially of that magnitude. The systems were plagued with a myriad of issues, from how to collect and retrieve the evidence to the quality of the investigations, and so on. They did, however, introduce a High-Level Task Force in order to fight sexual exploitation and abuse in 2017. Under the supervision of Jane Holl Lute as Special Coordinator, the United Nations attempted to improve their responses to allegations of misconduct.

Before the High-Level Task Force was implemented in 2017, a first attempt was launched in 2002 as the Inter-Agency Standing Committee established a Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises. The Task Force had a similar objective and set out to improve the protection of women and children.

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158 A/60/862, 24.05.2006, para. 38–53.


Further, regarding cases of military accountability in instances of SEA, the Security Council released resolution 2272 in March of 2016 which states that the Secretary-General can call back individuals in military units or the police unit of a contingent in the event there is credible evidence of widespread of systematic exploitation and abuse by the unit and give immediate effect to this decision.\textsuperscript{162}

Returning to the subject of prevention, the United Nations has begun to control and research the past actions of future peacekeepers through a process of self-attestation and the checking of units against the reports of the Special Representative on Sexual Violence. As of yet, this process has not been proven to be adequate.\textsuperscript{163}

In summary, based on multiple reports and comments from experts, it can be said that the United Nations and its Member States must improve their response to sexual exploitation and abuse. First and foremost, there must be an extension of the criminal jurisdiction of Member States for crimes committed outside their territories by their nationals deployed in peacekeeping missions. For decades, this lack of accountability has been significantly hindering the prosecution of SEA, among other unlawful acts. Building on this, it is necessary for increased cooperation between the UN Member States and the United Nations to ensure an effective joint task in pursuing the investigation and prosecution of crimes. Furthermore, offering judicial and technical assistance, as well as finally advocating for cooperation between all involved parties will ensure that the gathering of evidence and information and the subsequent prosecution can be adequately addressed.\textsuperscript{164} Despite the United Nations’ pursuit of various methods of combating SEA incidents committed by peacekeepers, the results remain unsatisfying.

8. Significant Cases

A closer look at individual peacekeeping mission’s legal incidents will be taken to illustrate the points made in this thesis. All of these incidents show the legal issues faced by peacekeeping operations on both personnel and institutions. The cases in question deal with sexual exploitation and abuse and acts of omission, which were committed while serving under the UN flag.

The prosecution in any of those cases has proven to be complicated. Regardless, individual judgements have been passed, which will also be listed. The cases took place in different countries all over the world at different times, and their legal reconditioning varies from case to case.

\textsuperscript{162} S/RES/2272, 11.03.2016, p. 2.
\textsuperscript{163} Kihara-Hunt, Addressing Sexual Exploitation and Abuse The Case of UN Police – Recommendations, journal of international peacekeeping 21 (2017),68.
8.1. United Nations Protection Force in Bosnia and Herzegovina (UNPROFOR)

UNPROFOR and its role in the Srebrenica massacre is the first case this thesis will take a closer look at. This case represents the repercussions for a state in case of misconduct or act of omission during a peacekeeping mission, further illustrated by the legal proceedings through the Dutch legal system.

UNPROFOR was created in June 1992 in Bosnia and Herzegovina as an extension of UNPROFOR, which was first established in Croatia in February of 1992. The mission was tasked by their mandate to ensure the safety of the delivery of humanitarian aid intended to be transported to Bosnia during the war.

The war was caused by the end of the Social Federal Republic of Yugoslavia in 1991 and the war in Croatia, which eventually ended up spilling over to Bosnia. It started in 1992 in Bosnia and ended in October of 1995 as military offensives of the Bosnian and Croatian forces, as well as a NATO airstrike, were deployed against the Serbs (Operation Deliberate Force). The mission itself was terminated in 1995 after the Dayton Peace Agreement was signed.

The subsequent secession of Slovenia and Croatia put Bosnia in the difficult position to decide how the future of their country would look like. After holding a referendum, Bosnia eventually proclaimed its independence from Yugoslavia. Tensions quickly increased, and there were clashes between the different ethnic groups. The situation escalated as Serbia took control over great parts of Bosnia in summer of 1992 and the first signs of ethnical cleansing became evident.

The peak of those violations was the massacre of over 7000 Muslim civilians by Bosnian Serbs in an area the United Nations declared as a “safe zone” in Srebrenica in July of 1995. This thesis will further delve into this massacre and the role the peacekeeping mission played in it.

The mission was, as stated above, an extension from the Croatia mandate UNPROFOR under Security Council’s Resolution 758 issuing the order to deliver humanitarian assistance to Sarajevo and giving the United Nations authority over the airport. About 10000 peacekeepers were initially deployed, but eventually, 22895 were sent to Bosnia and Herzegovina between 1992 and 1995.

165 Ibid, 411.
167 Bosnia was composed of three ethnic groups at this time: 44% Muslims, 31% Serbs and 17% Croats.
168 Brunborg, Urdal, Report on the Number of Missing and Dead from Srebrenica, 2.
169 S/RES/758, 8.06.1992
As mentioned before, the operation originated in Croatia and Bosnia was only added at the request of the Security Council since the two reports of the UN Secretary-General had dismissed sending a peacekeeping operation there. Defining a suitable scope for any missions was impossible, so the Secretary-General.\textsuperscript{170}

Two months later, the UNSC Resolution 770\textsuperscript{171} was added, which acted under Chapter VII of the UN Charter taking every step to ensure that the humanitarian aid could be delivered. Furthermore, it was emphasized how imperative it was to convince all conflict parties to negotiate a peaceful solution.

In September 1992 UNSC Resolution 776\textsuperscript{172} extended UNPROFOR’s mandate and in April of 1993 UNSC Resolution 819\textsuperscript{173} and Resolution 824\textsuperscript{174} established the “safe areas” Sarajevo, Tuzla, Bihac, Srebrenica, Gorazde and Zepa.

UNSC Resolution 836\textsuperscript{175} reaffirmed once again the sovereignty, independence and territorial integrity of Bosnia and Herzegovina and the responsibility of the United Nations in this regard. On June 4\textsuperscript{th} the UNSC Resolution 836 stated that UNPROFOR was given permission to act in self-defence with the use of force and even further authorized Member States to take all necessary measures to aid the UNPROFOR, including regional organizations like the NATO Alliance.

\section*{8.1.1. Mothers of Srebrenica Ruling}

The legal proceedings in misconduct or acts of omission in peacekeeping missions are complicated and rarely successful, which has been demonstrated in this thesis on multiple occasions. However, in the case of the massacre of Srebrenica, the Dutch Supreme Court actually heard the case, which was initiated by the Mothers of Srebrenica and delivered its judgment on 19th July 2019. This case has been chosen as it shows the responsibility of states when unlawful acts are committed during peacekeeping missions in great detail.

The plaintiffs in this instance were the Mothers of Srebrenica, a movement of Mothers of Srebrenica and Žepa Enclaves, which was established in 1996. It is a non-governmental and non-profit organization in Bosnia and Herzegovina. The purpose of the association is to gather survivors and family members of the victims of the incidents of Srebrenica and Žepa, the fall of the UN "Safe haven" in 1995.\textsuperscript{176}

\begin{footnotesize}
\textsuperscript{171} S/RES/770, 13.08.1992
\textsuperscript{172} S/RES/776, 14.09.1992
\textsuperscript{173} S/RES/819, 16.04.1993
\textsuperscript{174} S/RES/824, 06.05.1993
\textsuperscript{175} S/RES/836, 04.06.1993
\textsuperscript{176} http://enklave-srebrenica-zepa.org/english.onama.php, last accessed on 17.08.2020.
\end{footnotesize}
The Netherlands was among the countries, which supplied personnel for the peacekeeping mission UNPROFOR, namely the Dutch battalion (Dutchbat) and were present during the massacre in Srebrenica.

The Mothers of Srebrenica initially attempted to initiate legal proceedings both against the Netherlands and the United Nations, but the District Court, the Court of Appeal, the Supreme Court as well as the European Court of Human Rights ruled in favour of the UN, and their judgments confirmed the immunity of the international organization.\textsuperscript{177} Thereafter, the organization turned its attention solely to the Netherlands as further legal proceedings against the United Nations were dismissed on all official channels.

The organization was holding the state liable for the acts and omissions of Dutchbat in the timeframe preceding and following the fall of the city of Srebrenica. They accused the Dutchbat of withholding their support and doing nothing to stop the attack, carried out by the Bosnian Serbs, and that they failed to protect the refugees. They had fled the area and sought safety in their compound. Following the attack, the males were separated from the others by the Bosnian Serbs and were deported, after which they were murdered.\textsuperscript{178}

As the Courts upheld the United Nations immunity and therefore the jurisdiction of the Dutch Courts, the question about the state’s liability was what had to be answered by the Supreme Court’s ruling.

First, the Court had to inquire if and to what extent the acts which took place under the UN flag could be attributed to the Netherlands. In such a case the rules of written and unwritten international law apply including the International Law Commission’s Draft Articles on the Responsibility of International Organizations (DARIO) and the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARS).

Art. 4 and Art. 8 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts as well as Art. 6 and Art. 7 of the Draft Articles on the Responsibility of International Organizations can be applied in this case.

So does Art. 6 (1) DARIO state that “the conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization” indicating that Dutchbat’s actions, as a peacekeeping force, could be attributed to the United Nations.


The UN Legal Counsel and the UN Secretariat further state that an act of peacekeeping force is seen as a subsidiary organ of the United Nations and therefore the organization is liable if “committed in violation of an international obligation entails the international responsibility of the Organization and its liability in compensation.”

Furthermore, Art. 7 DARIO says that the conduct is attributed to the international organization if the relevant organization exercise effective control over that conduct. To sum up, both the UN and the Netherlands considered Dutchbat to be an organ of the United Nations and therefore under their control and authority.

However, Art. 4 DARS, which governs attribution and therefore the liability of the sending state says that “The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.”

This, as well as Art. 8 DARS, which asserts that “The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.” Both articles do not follow the same principle as Art. 6 and Art. 7 DARIO do.

Therefore, if all four articles are taken into consideration, the question of attribution remains. Art. 4 and 8 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts imply that the Dutchbat was still under the control of their state, in this case, the Netherlands. In contrast Art. 6 and 7 Draft Articles on the Responsibility of International Organizations state that, if troops are at the disposal of the United Nations they fall under their responsibility and not under the authority of the Netherlands.

Both the District Court and Appeal Court came to their ruling based on different argumentations and varying interpretations of the law at hand.

The District Court, as the first instance, applied Art. 7 DARIO. They supported their decision with the wording of the article, which stated that if the organization has “effective control over that conduct” the Court would recognize the authority of the UN over the troops; as they were placed at their disposal and therefore were under their effective control. However, they never confirmed if they actually were an organ of the United Nations.

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The Court of Appeal noted that neither the United Nations nor the Courts disagreed on that fact, that even though troop-contributing nations do retain a certain power, they rarely take the above mentioned effective control. The UN, as the organization in control of the peacekeeping mission, usually takes command, as it was the case with Dutchbat.

Therefore, the Mothers of Srebrenica had to prove and show the evidence that effective control had laid with the Netherlands and not the United Nations. They argued that the actions of the peacekeepers always have to be attributed to the sending state if those actions are in contravention of the orders given by the United Nations, the so-called ultra vires conduct. This was something, which the Court, in their opinion, did not realize.¹⁸²

This argument was flawed though as Art. 8 DARIO actually states that “The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions” meaning that ultra vires conduct is attributed to the international organization and not the state.¹⁸³

All in all, the Dutchbat's actions are seen as acts of the United Nations by the Appeal Court, conceding that they took place during official capacity, and under the authority of the UN. Even if those actions were carried out against orders and therefore were acting beyond their legal power or authority, the responsibility remains with the United Nations.

The Appeal Court states that to prove that the state had actual control (factual control) over its troops during cases of misconduct or acts of omission, all factors had to be taken into account and seen in a broader context. The Court also heavily relied on Article 7 DARIO and pointed out that communications or any other kind of direct contact between the Dutch UNPROFOR officer and the Dutch government do not prove effective control. Based on the evidence, the Court saw the Dutchbat as an organ of the United Nations as the control had been transferred to them.¹⁸⁴

If the wording of Art.7 DARIO is followed though, it would actually suggest the opposite of the Appeal Court’s interpretation. Art.7 implies that, if a contingent is placed at the disposal of the United Nations it remains an organ of the sending state and does not become an organ of the international organization as it is only temporarily placed at the disposal of the UN. The Court’s ruling would have been supported by Art.6 DARIO, which the Appeal Court, however, never applied.¹⁸⁵

¹⁸³ Ibid, para 15.2
¹⁸⁴ Ibid, para. 12.1.
The Court of Appeal eventually decided that the operational military operation of Dutchbat was carried out without actual control by the state and within the official capacity and the overall functions of the UN troops. Therefore, the acts of Dutchbat cannot be attributed to the state, even if they act as ultra vires.\textsuperscript{186}

Nonetheless, the Court of Appeal concluded that in this specific case, other factors had to be taken into account. In Srebrenica, contrary to other peacekeeping operations, the UN mission had essentially failed, and the Netherlands made the decision together with the United Nations to evacuate the population from the \textit{mini safe area}. The Dutch government was directly involved in this decision.\textsuperscript{187}

The Court further states that Dutchbat focused on its tasks given by the United Nations and their sending state, namely the preparation of the evacuation of Dutchbat and the refugees from the mini safe area. The Netherlands had, to that extent, effective control. According to the Court of Appeal, \textit{“the State had effective control over acts performed by Dutchbat in relation to the humanitarian aid and the evacuation of refugees in the mini safe area;”}\textsuperscript{188} therefore those acts could be attributed to the Netherlands.

The Supreme Court, on the other hand, based its judgment, contrary to the Appeal Court, on Art.8 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. The Supreme Court once again emphasized the point that the burden of proof regarding the liability of the state was with the Mothers of Srebrenica.\textsuperscript{189}

The Supreme Court came to the conclusion that Dutchbat was an organ of the United Nations and therefore rejected the notion that Dutchbat was an organ of the state in the sense of Art.4 DARS.\textsuperscript{190} This is confirmed by the Supreme Court’s point in the Nuhanović case where the ruling said that based on the Commentary on Article 7 DARIO the attribution rules applies, inter alia, to the situation in question. The state placed troops at the disposal of the United Nations and transferred command and control to the organization. The disciplinary powers and criminal jurisdiction, however, remained with the seconding state.\textsuperscript{191}

This statement was even further confirmed by Art. 8 DARIO, as this article can only be applied to organs of international organizations. Therefore, both the Court of Appeal as well

\textsuperscript{186} Court of Appeal of The Hague, The Netherlands, 200.022.151/01,30.03.2010, Mothers of Srebrenica et al. v. State of The Netherlands and the United Nations, Judgment in the First Civil Law Section, para. 32.
\textsuperscript{187} Ibid, para 24.1.
\textsuperscript{188} Ibid, para 24.2.
\textsuperscript{189} Supreme Court of The Netherlands, The Netherlands, 17/04567, 19.07.2019, Mothers of Srebrenica et al. v. State of The Netherlands, Judgment., para. 3.1.2.
\textsuperscript{190} Ibid, para. 3.3.3.
\textsuperscript{191} Supreme Court of The Netherlands, The Netherlands, 12/03324, 06.09.2013, The State of the Netherlands v. Hasan Nuhanović, Judgment, para. 3.10.2, para. 3.11.3.
as the Supreme Court attributed ultra vires acts of Dutchbat to the United Nations, supported by Art. 8 DARIO, Dutchbat is indeed considered to be an organ of the UN.  

Thus, the Supreme Court had to answer the question, if Dutchbat’s conduct fell under the authority or control of the state within the meaning of Art.8 DARS. The Court based its decision on ICJ case law, conducting that Dutchbat’s actions could only be attributed to the Netherlands if they indeed carried out effective control in that specific instance. To add to this, based on Art.8 DARS, the Supreme Court ruled that ultra vires conduct is in this instance generally associated with the international organization and that Dutchbat can only be attributed to the state if the requirement of Art. 8 DARS can be satisfied. 

So the Court further concluded that, if actions were carried out in a general, overall way, provided by the state, then there was insufficient evidence to prove effective control. Therefore, the Supreme Court ruled that the Netherlands did in fact not have effective control before the fall of Srebrenica. They concluded that the conduct of Dutchbat until 23:00 on 11 July 1995, was executed under the sole authority of the United Nations and could not be attributed to the state. Protecting the city and ensuring everyone’s safety was still the duty of the UN. After this period the Supreme Court states though that “starting from 23:00 on 11 July 1995, after Srebrenica had been conquered and after it was decided to evacuate the Bosnian Muslims who had fled to the mini safe area, the State did have effective control of Dutchbat's conduct. That conduct can be attributed to the State for that reason.”

The Court’s decision did not correspond with the previous judgment of the Supreme Court in the case Nuhanović. In that instance Art. 7 DARIO had been the legal basis for the ruling. Art. 8 DARS only played a small role in that decision, while it was the primary legal basis in the Mothers of Srebrenica case. The Supreme Court argues its point that in this case, unlike in the Nuhanović proceedings, putting Dutchbat at the UN’s disposal indicates that their conduct can exclusively be attributed to the United Nations and not the Netherlands. The Nuhanović judgment, however, attributed conduct to both the UN and the state. This is the reason why the provisions in DARIO regarding the attribution of conduct to an international organization are not actually significant in these proceedings.

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193 Ibid, para. 3.4.2, referring to International Court of Justice, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment on the Merits of 27 June 1986, especially para. 115; Mothers of Srebrenica Supreme Court, para. 3.4.3, referring to International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment on the Merits of 26 February 2007, especially paras. 400–401, and 406.
194 Ibid, para 3.6.1
195 Ibid, para 5.1
197 Ibid, para 3.3.5.
In summary, it can be said, therefore, that the Supreme Court concluded that the Netherlands is liable to a limited degree, attributing responsibility to the state for all actions taking place after the fall of the city of Srebrenica.

The Court further states in its ruling that Dutchbat withheld the chance of escaping from these male refugees from the Bosnian Serbs. This was unlawful. The Court rules “that the chance that the male refugees, had they been offered this choice, would have escaped the Bosnian Serbs was small, but not negligible. That chance is estimated at 10%. This is why the liability of the State is limited to 10% of the damage suffered by the surviving relatives of these male refugees.”

This Court refers to the concept of the power-to-prevent standard, established in the Nuhanovic proceedings, which, however, is not applicable in this case. Even though the Netherlands is to be held fully responsible for that 10%, they also move further away from those standards, which would imply that a state had means, be it through troop selection and promotion, training, disciplinary authority or criminal jurisdiction to retain control and therefore full responsibility for actions taken during peacekeeping missions.

In conclusion, the Supreme Court’s Mothers of Srebrenica ruling indicates that the acts of UN peacekeepers will generally be attributed exclusively to the United Nations. The UN, in response, will likely continue to invoke immunity before any court, domestic or international, leaving taking legal actions rather tricky.

8.2. United Nations Assistance Mission for Rwanda I (UNAMIR I) and United Nations Assistance Mission for Rwanda II (UNAMIR II)

The United Nations first became involved in Rwanda as Resolution 846 came into place in June 1993, creating the UN Observer Mission Uganda – Rwanda. The civil war in Rwanda already started in October of 1990 when the Rwandan Patriotic Army invaded northern Rwanda across the border shared with Uganda.

The civil war was caused, among other things, by the Rwandan Patriotic Front’s attempt to return stateless Rwandan refugees to Rwanda, which the government refused. This was what set things in motion, leading to the conflict between the Tutsi and Hutu, the two biggest ethnic groups in Rwanda.

The Tutsi were the dominating group, despite being the minority, while the Hutu dealt with poverty and oppression. The civil war took place from October 1990 till mid-1993 and eventually ended in a peace agreement and a power-sharing government. Following this

198 Ibid, para 5.16.
agreement, the UN Assistance for Rwanda (UNAMIR I) was created in an attempt to keep the peace in the country.

Those attempts turned out to be futile as on April 6th Rwanda’s president Juvenal Habyarimana was assassinated in his plane. His murder triggered a new uprising in the civil war, leading to the killing of Tutsi civilians and the elimination of the political opposition. The war soon escalated as the “The Hutu Power”, which had the goal to exterminate the Tutsi gained supporters. It went on for about three months in which approximately over one million people were killed.²⁰² It was concluded later that the actions taken in this war went against the 1948 Genocide Convention.²⁰³

UN Security Council Resolution 846 authorized the first peacekeeping operation, the UN Observer Mission Uganda-Rwanda (UNOMUR). Its primary purpose was to transport lethal weapons and ammunition across the border. The resolution listed the need to prevent the resumption of fighting to ensure peace and security in the country. The mission only consisted of 81 military observers and lasted from 16th August 1993 till 21st September 1994. It was a joint effort by Bangladesh, Botswana, Brazil, Hungary, Netherlands, Senegal, Slovak Republic and Zimbabwe.²⁰⁴

As mentioned above, the second UN Security Council Resolution in place was number 872 which had the purpose of ensuring the security of Kigali, the capital of Rwanda, as well as keeping an eye on the ceasefire agreement and aiding in upholding the Arusha Peace Agreement. In addition, the deployed peacekeeping mission was tasked with monitoring the security situation during the final period of the transitional government’s mandate, leading up to the election as well as to assist with mine clearance.²⁰⁵

The first peacekeeping operation took place from 5.10.1993 till 17.05.1994, with a troop strength of about 2548 military personnel from Belgium, Ghana and Bangladesh. The mission was eventually reduced to 270 military personnel after the end of the civil war. The United Nations’ aid was first requested by all conflict parties to establish if Uganda had actually supported the Rwandan Patriotic Front. The Security Council eventually agreed to send UN military observers, even though they were reluctant to do so.²⁰⁶

The second peacekeeping operation was created in May 1994, based on the UN Security Council Resolution 918,²⁰⁷ approximately eight weeks after the civil war and the genocide of the Tutsi had started. Even though there were requests from non-governmental organizations (NGOs) to intervene, as well as a call from the International Committee of the Red Cross, the intervention of the United Nations was minimal.

²⁰² Melvern, A People Betrayed: The Role of the West in Rwanda’s Genocide (2009), 248.
²⁰⁴ S/RES/846, 22.06.1993.
²⁰⁷ S/RES/918, 17.05.1994
They did expand and strengthen the deployed peacekeeping mission UNAMIR II, and the mandate changed from a neutral mediator in a civil war to an increased level of military force. UNAMIR I’s mandate and rules of engagement firmly constrained its capacity to self-defence against people or groups, who threatened protected sites and populations. That was the full extent of force allowed by the UN mandate.

UN Security Council Resolution 965 was issued in November of 1994 to support and protect the staff of the newly created International Criminal Tribunal for Rwanda (ICTR). In addition, the security and protection of displaced persons, refugees and civilians at risk in Rwanda through the troops, including establishing and maintaining secure humanitarian areas. Also listed was security and support for the distribution of humanitarian relief operations and assistance in training a new, integrated, national police force.

UNAMIR II had troop strength of about 5500, a clear increase to the former mission, UNAMIR I. Personnel from Ghana, Canada, Mali, Togo, Senegal, United Kingdom, India, Ethiopia, Congo and Australia was added to the mission, and it cost about US$ 256 million.

After it became apparent that military observers were not sufficient enough, the government of Ghana immediately offered up troops to carry out the first step of the mandate, ensuring security and protection. Their equipment was not adequate, however. Therefore, the UN’s Department of Peacekeeping Operations issued a request to the other Member States for aid. The response from other countries was unsatisfactory, though.

Another issue, in addition to too few responses from other the Member States, was the lack of agreement concerning the tasks of the reinforcements. The opinions on how to handle the operation were divided, while the humanitarian crises became worse and worse.

The incident of Rwanda and UNAMIR was another instance where the questions of liability, especially in the case of acts of omissions arose. The inquiry of liability was both directed at the United Nations as well as Belgium, which contributed the most extensive Western contingent to the peacekeeping mission. Neither the United Nations nor any other Member of the UN faced the consequences, but charges were brought up against the Belgian State.

The state’s decision to evacuate its own peacekeeper officers from the Belgian/ United Nations compound instead of helping Rwanda refugees, who asked for protection, was challenged. The opposition intended to drive the UN out by killing 10 of its Belgian peacekeepers, leading to the withdrawal of the Belgian forces. Belgium subsequently

\[210\] Ibid, 475.
requested for complete withdrawal from UNAMIR, but the UN Security Council instead voted to downsize its operations in Rwanda as the genocide started.\textsuperscript{211}

The Belgian commanding officer in Rwanda, Colonel Luc Marchal, however, later said he considered the order to pull out an act of cowardice. “\textit{We were perfectly aware of what was about to happen. Our mission was a tragic failure. Everyone considered it a form of desertion. Pulling out under such circumstances was an act of total cowardice.”}\textsuperscript{212}

Civil lawsuits were brought up against Belgium by survivors and relatives of those killed before the Brussels Court of First Instance. The suit entailed demands to hold the defendants tortiously liable and order them to pay damages. The claimants argued that the Belgian State had effective control over the troops as the UN had handed over command. Therefore, the peacekeepers and their acts of omission would fall under the responsibility of the state. The Court had to decide, if the order to evacuate Belgian UN peacekeepers from the Belgian/UN compound, leaving the Rwandan refugees without protection was attributable to Belgium or the United Nations and whether there was a causal link between the evacuation and the massacre of the Rwandan refugees.\textsuperscript{213} The lawsuit was only filed against Belgium and not against the United Nations; therefore, jurisdiction was given to the Belgian Courts.\textsuperscript{214}

The Court established in its ruling that the decision to evacuate was made by the Belgian commander, who had been in constant contact with the chiefs of staff of the Belgian army and therefore was in command of the peacekeepers. Thus effective control had not been with the UN, but with the Belgian State.\textsuperscript{215} The Court added that both the mere passive presence of Belgian soldiers as well as the authorization given by their mandate to use force in self-defence would have ensured the safety of the Rwandan refugees, confirming the causal link between the evacuation and the massacre of the Rwandan refugees.\textsuperscript{216}

Even though the Court did not cite the Draft Articles on the Responsibility of International Organizations, namely Art.7, the ruling resembles the judgment of the Dutch Supreme Court in the Mothers of Srebrenica case, reinforcing the importance of the Draft Articles regarding the accountability of states in the matter of misconduct and acts of omission by peacekeepers.


The United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic is a UN peacekeeping mission, which began on April 10, 2014, in order to protect

\begin{footnotes}
\footnoteref{212} When the massacres started, UN troops saved white people, The Guardian, 19.12.1999, 1. Available at: https://www.theguardian.com/world/1999/dec/19/theobserver3, last accessed on 17.08.2020.
\footnoteref{213} Mukeshimana-Ngulinzira and ors v Belgium and ors, First instance judgment, RG No 04/4807/A, 07/15547/A, ILDC 1604 (BE 2010), 8th December 2010, Belgium; Brussels; Court of First Instance
\footnoteref{214} Ibid, para 26.
\footnoteref{215} Ibid, para 38.
\footnoteref{216} Ibid, para 48.
\end{footnotes}
civilians in the Central African Republic under Chapter VII of the UN Charter. The operation was deployed amid concerns regarding security, human rights and a growing political crisis.

The Central African Republic is among the least-developed countries worldwide, struggling with both poverty and political instability. In March 2013, the situation further escalated after Seleka, an established coalition of armed groups, overthrew President Francoise Bozize. Their actions caused an absolute breakdown in law and order, and the absence of the rule of law only served to destabilize the country further. The resulting conflict required the deployment of a peacekeeping mission to ensure the safety of the civilian population.

The African Union Peace and Security Council deployed the African-led International Support Mission in the Central African Republic, a decision which was supported by the United Nations. The United Nations closely observed the conflict taking place and considered different options to back up the MISCA. The Secretary-General was thus tasked to immediately submit a plan to aid the Economic Community of Central African States (ECCASY) and the African Union in close cooperation with all involved international parties.217

The United Nations, in resolution 2149,218 ordered the merge of UN- peacekeeping troops and the African-led International Support Mission to the Central African Republic. MISCA, the established, 6,000-strong African Union-led peacekeeping force, was integrated into the UN-lead peacekeeping mission and became operational on September 15, 2014. In the process, a significant number of the MISCA troops and police were re-hatted. Before the transition, MISCA struggled with numerous capacity issues. The regional organization had no unified command structure, and the various personnel from different contributors became rivals rather than partners in their attempt to achieve the goals set out in its mandate. The UN sent a transition team to coordinate MINUSCA and prepare for a smooth transition of authority from MISCA to MINUSCA. The integration took approximately five months, and it was intended that MINUSCA engage in their mission parallel with the support offered by the European Union and French219 non-UN security forces. At this point, the United Nations had authorized the deployment of about 12000 peacekeepers to facilitate the MINUSCA operation.220

Their main objective was to protect civilians, as well as support the transition process. They were tasked with facilitating humanitarian assistance, ensuring the protection of human rights as well as supporting the host country in establishing the rule of law. As of 2020, in an attempt to bring peace and security back to the Central Republic of Africa, close to 15000

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218 S/RES/2149, 10.04.2014.
219 MISCA was supported by the French Operation Sangaris, following the UN Security Council Resolution 2127
220 S/RES/2149, 10.04.2014
troops have been deployed from multiple troop sending countries, such as Rwanda, Pakistan, Egypt, Bangladesh, Zambia, and Morocco.\textsuperscript{221}

The Department of Peacekeeping Operations provided financial support, but its trust fund, established to alleviate a lack of resources, was a mere US $5 million. The money was mostly used to fund MISCA’s communication capabilities. The DPKO also offered its advice on how to construct and develop the mission. The Security Council instructed MISCA to carry out its mandate with full respect for International Humanitarian and International Human Rights Laws, as well as refugee law. In turn, the United Nations intended to provide MISCA with technical and expert advice.\textsuperscript{222}

After organizations personnel merged, tension developed between the United Nations and the African Union. The AU issued a complaint. They were under the impression the UN had not provided them with sufficient time to establish their own mission before the Secretary-General had recommended the UN intervention. The UN believed that this mission would prove to be too great a challenge for the AU. To sum up the situation in the Central African Republic, there were three other forces present: the African Union, France, and the European Union. None of those parties had or was willing to provide the resources needed to ensure there were enough peacekeepers, be they military, police or civilian workers. In addition, not one of these entities was capable of merging the established personnel. The UN Secretariat, therefore, decided that such a task was best handled by the United Nations itself.\textsuperscript{223}

The situation in the Central African Republic worsened rather rapidly, which placed a great deal of pressure on both on the African Union as well as the United Nations to quickly and efficiently resolve the situation. This meant that a high number of peacekeepers had to be deployed in a short amount of time.

Consequently, as the need for support had become immediate, the peacekeeping mission had to be assembled rather quickly. This led to numerous issues, including an inadequate process for the screening and vetting of troops. In the past, the United Nations have tried various methods to avoid sending insufficient personnel, however many of the tools developed were not used in this mission, nor was there compulsory training to ensure the protection of civilians or even standards of conduct or guidelines for instances of SEA.\textsuperscript{224}

Allegations of human rights violations against the MISCA AU force were soon made and were reported to the UN office in the Central Republic of Africa. To an extent, this was a

\textsuperscript{221} https://peacekeeping.un.org/en/mission/minusca, last accessed on 17.08.2020
\textsuperscript{224} Ibid, 220–236.
consequence of the insufficient screening process of the peacekeeping personnel. These allegations caused significant tension between the United Nations and the African countries involved. Furthermore, after the transition process, various complaints of human rights violations, especially those of sexual exploitation and abuse by peacekeepers, were again filed and documented by multiple sources.\(^{225}\)

One of these sources was UNICEF, whose report led to an inquiry, followed by another report highlighting the failure of the United Nations to prevent misconduct committed by its peacekeepers and a failure to respond to allegations of human rights violations, namely SEA. The report further documents crimes and human rights violations by non-UN security forces, as well as regional peacekeepers. In 2016 alone, the UN recorded over 311 victims of sexual exploitation and abuse by UN peacekeepers. The UN Secretary-General adds in his statement that peacekeeper operations under the Security Council mandates account for 20 allegations, involving an additional 20 victims in 2016.\(^ {226}\)

To circle back to the different sources reporting SEA, both the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Children’s Emergency Fund (UNICEF) continued to conduct and oversee interviews with child victims and reported each incident to MINUSCA. No legal actions were taken, however, despite a collection of evidence, which indicated that criminal misconduct had occurred.\(^ {227}\)

Frustrated by this, Anders Kompass leaked information regarding cases of sexual exploitation and abuse committed by peacekeepers. In September 2014, the UN’s Office of Internal Oversight Services (OIOS) began investigating the report, which documented the sexual exploitation of children committed by French troops during a mission.\(^ {228}\) Allegations were directed at the United Nation’s failure to step in and prevent the abuse.

Since there were many other accounts of SEA by peacekeepers being reported by Non-Governmental Organizations (NGOs), the numbers mentioned above likely do not measure up to the actual counts of misconduct. As this thesis has stated on multiple occasions, there is a lack of protection given to SEA victims, as well as insufficient opportunities for reporting crimes, the investigation and recording of such crimes are likely inadequate and incomplete.\(^ {229}\)

\(^{226}\) A/71/818. 28.02.2017, 8.
\(^ {228}\) The Conversation (29 April 2015), available at: https://theconversation.com/french-peacekeeper-abuse-scandal-fits-an-old-pattern-of-impunity-40991, last accessed on 17.08.2020
The CAR Panel, which reviewed the progress in the Central African Republic, clearly states that there did exist a mishandling of allegations of human rights violations by MISCA troops. Once again, this illustrates one of the main issues with the investigations of misconduct during peacekeeping missions. Even when allegations are made and reported, legal proceedings rarely take place.

Furthermore, it was concluded by the UN report that the due diligence policy process regarding the rapid re-hatting of MISCA troops and their subsequent integration in the UN MINUSCA operation was not effectively implemented. Despite the reported evidence of numerous allegations of sexual exploitation and abuse, both by victims and in the media, the Department of Peacekeeping Operations still made the decision to deploy this personnel into MINUSCA.

The report of the Secretary-General states that there were several factors the UN had to take into consideration regarding the application of human rights before the re-hatting process in the Central African Republic could commence. The concerns, however, were only partially addressed with the training and additional screening of MISCA contingents. The Secretary-General adds that for future missions “timely coordination on and implementation of the human rights screening policy at the earliest stages of the African Union–United Nations transition would enhance compliance with human rights standards.”

As the operation was a joint effort, the accusation of deploying unfit peacekeepers was addressed with both the United Nations as well as the African Union. There were indeed reports that the AU did not use appropriate means and caution in recruiting some of the soldiers serving in the MISCA operation.

As mentioned before, the need for peacekeeping personnel was immediate, and as the conflict continued to escalate rapidly, the help of the Western States was not anywhere near enough to ensure the goal of the mandate was reached. This led to numerous mistakes in what was already considered a volatile and dangerous mission in an unstable country.

This lack of accountability remains evidenced by the events surrounding the misconduct, especially in cases of sexual crimes in the Central African Republic, and in the ways that sending states and the United Nations have dealt with these allegations. One of the greatest issues continues to be an uncertainty in how to contend with the various types of peacekeeping operations that exist. Furthermore, as the case of Kompass proves, the UN’s process for safeguarding victims, witnesses, and whistleblowers is somewhat tenuous and requires considerable improvement.

However, in the case of the Central African Republic and the MINUSCA operation the Security Council adopted the first resolution that acknowledged the need for the United

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230 S/2015/3, 05.01.2013, 6.
Nations to extract security forces from states, which have failed to take accountability and take such failures seriously.\textsuperscript{232}

Despite certain positive changes, the follow up on charges, if they were brought up in the first place, are rare and complicated. This holds true for many instances in the peacekeeping history, and it is no different for the Central African Republic and the MINUSCA peacekeeping operation.

\textbf{II. Conclusion}

This thesis analyzed UN peacekeeping operations and international responsibility in cases of misconduct and acts of omission. When peacekeeping missions were first established in the 1940s, neither the United Nations nor the Member States established clear rules to follow, especially concerning accountability. Furthermore, neither expected the extent future missions would have as the global partnership between the Security Council, the General Assembly, the UN Secretary, as well as military, civilians and police from a multitude of Member States grew.

Peacekeeping was born at a time where the Cold War caused a rivalry of the Superpowers, which regularly paralyzed the Security Council’s ability to function. The UN Security Council, responsible for international peace and security according to the UN Charter, is the organ issuing the mandates outlining the tasks of the officers. The peacekeeping personnel, the so-called blue helmets, work under the UN flag and are instructed by the Department of Peacekeeping Operations. The United Nations does not have its own troops. They are provided by the Member States, but the troop-contributing countries are acting under the command of the United Nations.

Over the years the Principles of Peacekeeping, the so-called Capstone Doctrine has been established to find some common ground. The Doctrine points out three main principles that shall be upheld: consent of the host country, impartiality and non-use of force except in self-defence or defence of the mandate.

Furthermore, in the course of years, the objective of the United Nations and its members shifted from simple observation missions to so-called robust peacekeeping, extending the mandate far beyond its original meaning. This, among other reasons, has led to questions concerning the violation of human rights that have not been addressed before. Building on this, another issue this thesis has pointed out are cases of acts of omission and misconduct. The latter mainly, but not exclusively, applies to instances of sexual exploitation and abuse, which has become an increasing concern of both the United Nations and the Member States.

\textsuperscript{232} S/Res/2272, 11.03.2016, para. 1–3.
It has proven to be challenging to follow up on allegations of any kind of misconduct or act of omission for various reasons. One of them being that, conducting legal proceedings during a conflict or similar situations is rather complicated and sometimes hardly possible.

Although even if investigations and prosecutions are carried out, the question of jurisdiction remains and which is, as shown in this thesis, a question difficult to answer. As peacekeepers serve under the UN flag immunity from prosecution is a topic, both for the peacekeeper and the organization itself. Immunity has to be given to a certain extent to protect the deployed troops from constant interference of the host country. However, its purpose is not to shield the peacekeepers from prosecution for criminal acts committed, that do not align with their duties and the law.

This is further emphasized by the fact that peacekeepers enjoy only functional immunity, which only covers conduct that happened during official functions. Even though immunity can be waived, as stated in this thesis, this rarely happens.

Scholars and legal experts have attempted over and over again to codify rules in regards of peacekeeping, namely the Draft Articles on the Responsibility of International Organizations and the Draft Articles on Responsibility of States for Internationally Wrongful Acts, both created by the International Law Commission.

Neither codification is binding, but they both have been cited by multiple international courts and have generally been well received.

In an attempt to further clarify the relations between the involved states as well as the United Nations, both the Status of Forces Agreement and the Memoranda of Understanding were created. The first one mentioned is an agreement between a host country and a foreign nation for the presence of a military operation within the host’s borders. The mission-specific SOFAs are agreed upon between the UN and the host state. The MOU is a negotiated formal agreement between the United Nations and a Member State to establish basic terms and conditions during peacekeeping operations.

Furthermore, over the years, more and more case law has been established. This thesis took a closer look at a few cases which attempted to find solutions to the question of accountability and outline case law.

Further attempts to define accountability of both the UN and TCC were made in the Behrami and Saramati ruling. Even though the case has been one of the most cited cases, its approach has raised many doubts by legal experts as well as other judges of the European Court of Human Rights.

Preceding Behrami and Saramati ruling was the case law established in the Bosphorus case two years earlier. This case’s judgment established the two-stage legal test necessary to define the outlining of the equivalent protections, adding another vital aspect in handling legal disputes with international organizations.
The third case, which was looked at in greater detail in this thesis was the Al-Jaad ruling. The case, which was first tried in the House of Lords in the United Kingdom before being handed over to the European Court of Human Rights, eventually followed the principle of the effective control standard instead of the overall control principle, which was a key element of the Behrami and Saramati judgment. The legal basis for effective control has already been developed in 1986 as a consequence of the ruling in the Nicaragua case and further defined in the Bosnian Genocide case in 2007.

Two other significant cases, which this thesis also followed up, were the peacekeeping missions in Rwanda and Bosnia and Herzegovina as they are seen as two of the greatest failures of the UN peacekeeping missions in its entire history. Following the inadequate performance of both missions, the Brahimi Panel was established in 1999 by the Secretary-General Kofi Annan in an attempt to avoid such failings in future missions.

The goal was to figure out which are the flaws and weaknesses of the existing peace operations and come up with recommendations. All those recommendations were made with the principles of the Charter of the United Nations in mind. In summary, it can be said that very few ways to conduct investigations and prosecution against the United Nations itself have been created. In many cases, the Courts decided in favour of the UN and upheld their immunity.

Even though peacekeeping missions usually are between the UN and its Member States in certain instances other organizations, like the European Union or the African Union, took part in the missions. The thesis took a closer look at the two just mentioned organizations and their involvement in multiple missions. Troops of either organization were sent to support the UN-led peacekeeping mission, be it with the military, financial or humanitarian aid.

Taking a step back from the accountability of organizations, this thesis further followed up on individual accountability of the peacekeepers. Peacekeeping personnel serve under the flag of the UN and therefore enjoy certain immunities. Moreover, as each mission consists of different personnel, be it military, civilian or police, every single one of those sections enjoys a different kind of immunity. The primary way to deal with peacekeepers, who commit any act of omission or misconduct, was to hand them over to their home states and let them follow through with their legal proceedings. However, this, as well as waiving immunity rarely happens in reality. Peacekeepers tend to be tough to prosecute, no matter if in their home country or the host country.

Professor Ai Kihara-Hunt has listed different steps on how to approach misconduct in peacekeeping missions in one of her articles mentioned in this thesis. This includes proper vetting and training of peacekeeping personnel, the sharing of information and the protection of victims, witnesses and whistleblowers. Further points of hers have been sufficient procedures during investigations and legal clarifications. Also, her proposal to
make information on cooperative and non-cooperative states public in order to add pressure at non-cooperative states is worth considering.

One other way, which was pursuit was International Human Rights or Humanitarian Law treaties as many involved countries had ratified the majority of them or they would have simply been bound to them by customary law. Unfortunately, this approach has turned out as mostly ineffective as the application depends on the question if an armed conflict exists and if peacekeepers are a party in this conflict. Those questions are usually answered with a negative response.

Neither seems the International Criminal Court to be a valid option, as the ICC only prosecutes four specific crimes, which rarely are committed by peacekeepers. In addition, the jurisdiction is limited by the principle of complementarity. Therefore, as concluded in this thesis, both approaches are not well suited to be implemented in an actual case.

The last party, which accountability is still not clear, are the Member States. This thesis took a closer look at both the host and troop-contributing country and its liability in case of acts of omission and misconduct. The host country’s capability to initiate legal proceedings is in general limited, as this is only possible if the Secretary-General waives the immunity of suspected peacekeepers or rare cases of on-site court-martial. One potential new path is the development of local ownership as it both legitimates the operation and strengthens the relationship between peacekeeping troops and the host country. The prosecution would hereby fall into the host state’s jurisdiction, leading to further advantages as well as disadvantages.

The case is somewhat different with troop-contributing countries though. As mentioned above, the United Nations takes command of the peacekeeping missions, consisting of troops from the Member States, which leads to the question of attributing conduct. The case law established in Al-Jaad ruling has been an important guideline to deduce a legal framework in regards to accountability of troop-contributing countries and attributing conduct.

In a similar direction than the Al-Jaad case went the Mothers of Srebrenica case. Its legal proceedings took place in front of the Dutch Courts, eventually being handed over to the Dutch Supreme Court. This thesis described one of the most significant judgements on peacekeeper accountability, especially concerning the responsibility of the state. The charges brought up by the Mothers of Srebrenica against the Netherlands, accusing them of acts of omission have eventually found to be correct, even if the degree of culpability of the defendant state was only estimated at 10%.

Although accountability could be attributed in the Mother of Srebrenica case, there has rarely been follow up on numerous accusations of misconduct or acts of omission. The other two cases, which are dealt with in this thesis, are the crimes committed in both Rwanda and
the Central African Republic. In neither instance could accountability be established in a broader range to deal with the allegations made.

Another significant issue that has been observed, which this thesis made a point of illustrating, is sexual exploitation and abuse by peacekeepers. Especially in the last few years, numerous allegations have surfaced, claiming human rights violations by the personnel deployed to ensure peace. The UN has an absolutely zero-tolerance policy to sexual exploitation and abuse and therefore has attempted, rather unsuccessfully though, to prevent them and follow up on the brought up charges.

Further research was done on this topic by the Zeid Report, which brings up issues and challenges as well as recommendations to improve peacekeeping missions in the future. One of those recommendations was the application of the Secretary-Generals bulletin on special measures for protection from sexual exploitation and sexual abuse.

Furthermore, the United Nations have established different instruments to handle the various cases of sexual misconduct allegations. Among them was the Conduct and Discipline Unit in 2005, the Board of Inquiry and as a follow up to the latter the Internal Oversight Service. None of those institutes were capable of carrying out their intended purpose adequately.

In summary, it can be said, therefore, that despite numerous attempts to establish a legal framework for peacekeeping operations, little has actually been successfully implemented. This thesis has given an account of a multitude of case law and undertaking codifying years of practice and knowledge, but very few results have been satisfactory. Nevertheless, in the last decade, there has been a significant increase in the number of cases submitted to the domestic courts.

There have been more claims for compensation for the damage caused by deployed peacekeeping operations, highlighting the need for a clear framework even more. Therefore, creating a convention, a specific legal framework for peacekeeping operations has potential and is a necessary step in dealing with multinational missions. However, if such a task should actually be accomplished, looking back on the past decades, it will likely be, at the very least, a long process.

At the same time, there is increased awareness of the need for establishing ways to hold international organizations more accountable. Therefore, further development in the legal proceedings of peacekeeping missions, especially in cases of misconduct and omission, is of great importance and remain one of the United Nations’ greatest challenges for the future.
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