

**SEXUAL OFFENSES COMMITTED IN UN
PEACEKEEPING - IN PARTICULAR THE
MANDATES OF MINUSCA AND MONUSCO**

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LIST OF ABBREVIATIONS

CAR	Central African Republic
CDU	Conduct and Discipline Unit
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRSV	Conflict Related Sexual Violence
CU	Coordination Unit
DFID	(UK) Department for International Development
DFS	Department of Field Support
DPO	Department of Peace Operations
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
GLE	Group of Legal Experts
ICC	International Criminal Court
IDP	internally displaced persons
IGO	inter-governmental organization
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
MoU	Memorandum of Understanding
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MSF	Médecins Sans Frontières
OHCHR	Office of the High Commissioner for Human Rights

OIOS	Office of Internal Oversight Services
SC	Security Council
SG	Secretary-General
SEA	Sexual Exploitation and Abuse
SGBV	Sexual and Gender Based Violence
SoFA	Status of Forces Agreement
SRSG	Special Representative to the Secretary-General
TCC	troop-contributing country
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNHCHR	United Nations High Commissioner for Human Rights
UNMIBH	United Nations Mission in Bosnia Herzegovina
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNTAC	United Nations Transitional Authority in Cambodia
WPS	Women, Peace and Security

1. INTRODUCTION*

“We deem it our responsibility ... to oversee every part of their missions - how many soldiers and police to send, what their mandate is, when they can use force. And we give them clear mandates to protect civilians. When governments attack civilians, it is our job. When armed groups, non-state actors, attack civilians, it is our job. When terrorists attack civilians, it is our job. So why in the world, when the UN's own peacekeepers are the ones attacking civilians – when peacekeepers commit the sickening crime of rape - is it someone else's job?”

Ambassador Samantha Power, 2016

27th United States Ambassador to the United Nations¹

Since the very beginning of its foundation, United Nations’ (UN) peacekeeping operations and troop-contributing countries (TCC) have played a vital role in suppressing worldwide humanitarian cruelty - such as sexual crimes and violence committed against civilians. As it is the only universal organization, the UN’s activity is clearly indispensable. Unfortunately, not all of the peacekeepers demean oneself to their protective roles. In some regions, it is not uncommon for exact peacekeepers to conduct human rights violations against the civilians they are supposed to protect. Many of them do not face any kind of consequences or prosecution for their actions and many victims are unable to seek legal remedy – which is unacceptable to the entire organization.²

The problematic phenomena of peacekeepers involvement in sexual abuse against the local civilian population was first made public in the 1990s, in the UN’s operations in Cambodia, Bosnia and Herzegovina, East-Timor and Kosovo. Then, from the beginning of the 2000s, widespread assertions appeared about abuses in Western Sahara and the Democratic Republic of Congo (DRC), committed by military and civilian personnel. Since then, the UN constantly

* The research was conducted with the support of the New National Excellence Program 2021/2022 financed by the Ministry of Innovation and Technology. The reference number is UNKP-21-2-I-NKE-14.

¹ Remarks at the UN Security Council Meeting on Sexual Exploitation and Abuse in UN Peacekeeping Operation, 10 March 2016, New York

² Felicity Lewis: Human Rights Abuses in UN Peacekeeping: Providing Redress and Punishment While Continuing Peacekeeping Missions for Humanitarian Progress, Southern California Interdisciplinary Law Journal, (2014) p 596-597

formulated strategies to prevent and combat different forms of sexual offenses committed by UN personnel in its peacekeeping operations.³

The cases of human rights violations committed by peacekeepers and detailed in the next chapters likely arouse the emotions of readers. Therefore, I consider it worth mentioning, that many peacekeepers faithfully protect the civilian population in conflict-affected areas and respect the universal principles of human rights. These cases do not represent the behavior of all peacekeepers.

1.1. Justification for the choice of topic

As the subject of my research, I examined sexual offenses committed in UN peace operations, with particular reference to the mandates of MINUSCA and MONUSCO. The primary motivation for my research was that I wrote my bachelor thesis about the topic of current challenges of UN peacekeeping, and then, as a master's student, I wrote my second research about the impact of armed conflicts on women's rights, in particular United Nations Security Council Resolution (UNSCR) 1325/2000. It can be stated, that decisions and agendas aimed at the protection of women and girls occupy an increasingly prominent place in this topic. There have been numerous reports of sexual offenses and abuse by UN peacekeepers for at least 25 years and for the last 15 the UN started to introduce a raft of measures to put an end to this. Nevertheless, since the birth of Resolution 1325/2000 and the Women, Peace and Security (WPS) Agenda, no grand breakthrough has been achieved in the protection of women, the prevention of sexual crimes and the accountability of perpetrators. However, there have been known severe abuses by UN peacekeeping personnel. These are clear examples of behavior that a peacekeeper should not engage in under any circumstances. I consider it particularly important that the protection of women and girls, the prevention of sexual crimes and the accountability of perpetrators be a priority in UN peacekeeping. I chose Operation MINUSCA in the Central African Republic (CAR) and Operation MONUSCO in the Democratic Republic of the Congo as the focus of my research. These two missions were deployed to ongoing-armed conflict affected areas, where there is "no peace to keep". Thus, as stabilization operations, they have introduced a new concept: they have robust mandates, allowing personnel to use force. As the aggressors have opted to use rape as a war tool and many different forms of force, peacekeepers are deployed to such areas that are particularly fragile. Yet, instead of protecting people in need,

³ Kathleen M. Jennings: Protecting whom? Approaches to sexual exploitation and abuse in UN peacekeeping operations, Fafo, (2008) p. 9

some of them decided to abuse their power and the circumstances. I believe that there have been a number of serious abuses during these mandates that the international community has not paid enough attention to.

1.2. Research questions and hypothesis

My primary goal is to introduce *which types of sexual offenses appear in UN peace operations* – namely these are Sexual and Gender Based Violence (SBGV), Conflict Related Sexual Violence (CRSV), Sexual Exploitation and Abuse (SEA) and Sexual Harassment. As different forms of sexual crimes can be traced back to different causes, victims experience them in different ways and, as a result, different strategies need to be developed to ensure their recovery. I firmly believe all personnel shall maintain the highest standards of integrity and conduct towards preventing any form of sexual offenses in line with established policies and frameworks. For this reason, my aim is to analyze the causes and circumstances under which different forms of sexual offenses take place.

In time, I will focus my research on the interval of 21st century, new generation peace operations, especially the mandates of MINUSCA and MONUSCO. Unfortunately, there has been an exaggerated amount of abuse in these two missions, including perpetrations committed by UN peacekeeping personnel. My goal is to analyze and present which forms of sexual crimes have emerged in these missions and answer the question *which characteristics of UN peace operations render a mission susceptible to SEA?*

In the final stage of the study, I seek to show the response of the United Nations to the abuses committed in the two operations analyzed. I have tried to achieve this by examining and analyzing two reports, namely the Zeid Report and the Deschamps Report. Last but not least, my aim is to present the different forms of criminal liability, the advantages and disadvantages of having abuses investigated by the sending state, the International Criminal Court (ICC) or a hybrid court and answer *why hasn't the UN managed to eliminate SEA?*

The boundaries of my dissertation are drawn by history and security policy disciplines for various reasons of size. Thus, the dissertation does not delve deeper into the history of the United Nations and the historical background of its development in peacekeeping, nor does it move into the field of security policy, it takes these backgrounds for granted and refers to them where and to the extent necessary. My research focuses on these two ongoing missions and two reports. I do not seek to present further peacekeeping operations or reports by other UN and other international organizations (IGO).

1.3. Presentation of methodology

In the first phase of my research, I dealt with general fundraising and foundational research. In this period, I collected the domestic and international literature related to the two previously mentioned mandates, the agendas, recommendations and cases related to the topic. I wanted to achieve the understanding of the UN legal framework by studying international documents, agreements, namely the Department of Peace Operations (DPO) Policy on Gender Responsive United Nations Peacekeeping Operations the ten UNSCR under the WPS Agenda, and other Council and General Assembly resolutions. I also used sources provided by the ICC, scientific journals and articles. I processed these documents by using qualitative methods during the analysis.

In the second phase of my research, specific analyzes were performed. At this point, I systematically processed the sources associated with the marked operations. I was emphatically looking for reports and cases of abuses under the mandates of MINUSCA and MONUSCO, which relate to the forms of sexual offenses presented in Chapter 2 of this dissertation. I used the Policy and the ten UNSCR under the WPS Agenda, other agendas and recommendations as primary, and other international documents and writings as secondary source. In several places, I collided and analyzed the information found using a comparative method. In the course of my research, I sought to review both the relevant domestic and international literature.

2. MAIN TYPES OF SEXUAL OFFENSES

Although peacekeeping is not specifically mentioned in the UN Charter, the organization carries out activities of paramount importance in this area. The UN is the only universal organization with a global reach and due to its weight in the international arena; it is one of the most important key players in crisis management.⁴

In spite of all these, there are challenges that the UN is still unable to handle – such as sexual crimes. It can be stated that it is not a new phenomenon; however, the focus has been on the subject only since the second half of the twentieth century after people became aware of these crimes due to the spread of media. The outrage got even more intense, as personnel of peace operations got involved in the allegations as perpetrators. The very first allegation about peacekeepers' involvement in misconduct was reported in the 1960's from Congo, where personnel took advantage of their situation and raped women.⁵ Since then, numerous allegations were reported, but it seems that there is still no major progress achieved to tackle sexual crimes.⁶ Finding the solution is not easy, as there are many different forms of offenses, lead back to different causes and taking place under various circumstances. For the ease of illustration, in the next sub-sections I aim to summarize the four main types of sexual offenses by describing the most important characteristics.

2.1. Sexual and Gender Based Violence

The widest term Sexual and Gender Based Violence refers to any harmful act that is directed at an individual, perpetrated against the person's will and based on their gender. SGBV inflicts harm on both female and male and violates human rights.⁷ Its roots are usually based in gender inequalities, unequal power relationships and harmful norms. The forms vary as SGBV can include emotional and psychological, physical and sexual violence and harmful traditional

⁴ Kitti Érsek: A nemzetközi béke és biztonság nyomában – Az ENSZ békefenntartás aktuális kihívásai a 21. században (2020) BA Thesis

⁵ Bonnie Kovatch: Sexual Exploitation and abuse in UN peacekeeping missions: A case study of MONUC and MONUSCO, *The Journal of the Middle East and Africa*, (2016) p. 159

⁶ Brianna Nicole Hernandez: Sexual Abuse in UN Peacekeeping: The Problem of Viewing Women as a 'Quick Fix', available: <https://www.e-ir.info/2020/02/20/sexual-abuse-in-un-peacekeeping-the-problem-of-viewing-women-as-a-quick-fix/>, last seen: 2021.11.29.

⁷ UNHCR The Refugee Agency: Gender-based Violence, available: <https://www.unhcr.org/gender-based-violence.html>, last seen: 2021.11.26.

practices and socio-economic violence committed public or private. It can also take place as child marriage, female genital mutilation and the examples of so called “honor crimes”.⁸

In case of SGBV, the perpetrator can be anyone: civilian or military personnel in positions of authority, individuals from the local, foreign, refugee and/or internally displaced persons’ (IDP) community who abuse their power. This is also true for the victims, where the only specific characteristic is they are targeted based on their gender. However, the risk is heightened in certain groups – such as females, girls, children, LGBTI+ persons, elders and persons with disabilities.⁹

SGBV is more likely to happen in times of crises, due to the sudden breakdown of families and communities after displacement. Furthermore, during times of armed conflicts, sexual violence is often used as a weapon of war. However, in most cases it is rooted to cultural and religious reasons with no specific cause for its appearance.¹⁰

2.2. Conflict Related Sexual Violence

Conflict related sexual violence as a wide term refers to “*rape, sexual slavery, forced prostitution, forced marriage, forced pregnancy, forced abortion, enforced sterilization and many other forms of sexual violence committed against female and male persons, who are directly or indirectly related to a conflict.*”¹¹ Rape and other forms of sexual violence in wartime have a particular meaning and are often used with the purpose of humiliation, conquest or demonstration of victory.¹²

Regarding the perpetrators, the most typical characteristic is they are part of state – military, police or paramilitary organizations under the command of state actors – and non-state – terrorist entities, rebel or militia organizations – armed actors.¹³ The victims are usually a member of a persecuted minority – whether it is political, ethnic or religious – and targeted based on gender identity and/or sexual orientation. It is generally associated with state collapse,

⁸ The New Humanitarian: Definitions of sexual and gender-based violence, available: <https://www.thenewhumanitarian.org/feature/2004/09/01/definitions-sexual-and-gender-based-violence>, last seen: 2021.11.26.

⁹ UNCHR The UN Refugee Agency: Emergency Handbook – Sexual and gender based violence (SGBV) prevention and response, available: <file:///C:/Users/user/Downloads/Emergency%20handbook.pdf>, downloaded: 2021.11.26.

¹⁰ Ibid.

¹¹ United Nations Security Council Report of the Secretary-General, S/2021/312 art. 5 (2021)

¹² Jelke Boesten: Of exceptions and continuities: theory and methodology in research on conflict-related sexual violence, International Feminist Journal of Politics (2017) p. 1

¹³ International Review of the Red Cross: Sexual violence in armed conflict, (2014) Elisabeth Jean Wood: Conflict-related sexual violence and the policy implications of recent research p. 458

displacement, trafficking, or violations of ceasefire agreements when committed in conflict related situations.¹⁴

CRSV is most likely to happen in two different scenarios: the first is due to “*sexual opportunism that is created by the chaos of war*” when perpetrators neglect to obey the code of conduct and norms. The second explains CRSV as a deliberate, strategic weapon of war, which serves as a tool against civilians to weaken and demoralize them. For this reason, it is more severe, as it is also presented as an attack against the community of the victims.¹⁵

2.3. Sexual Exploitation and Abuse

There are several different definitions of SEA in international treaties and their additional protocols – such as the Geneva Conventions, the Refugee Convention, CEDAW, United Nations Convention on the Rights of the Child and the Statute of the ICC – and other international documents – like UNSCR 1325/2000.¹⁶ The most commonly used version is provided by the 2003 Secretary General’s Bulletin. The Bulletin differentiates the term exploitation, which means “*any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to profiting monetarily, socially or politically from the sexual exploitation of another*” and the term sexual abuse which means “*the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions*”.¹⁷ There are numerous forms how SEA can be committed –for instance sexual activity with children, exchange of money, employment, goods or services for sex, (exploitative) sexual relationships between UN staff and beneficiaries of assistance and so on.¹⁸

SEA is recognized as a “*betrayal of trust by the international community*” because the perpetrators belong to the military or civilian personnel of the UN, unlike the victims who are local civilians.¹⁹ As locals’ situation is already fragile, the power imbalance between them and peacekeeping personnel is obvious. Besides this, what makes misconduct possible is most likely inadequate

¹⁴ United Nations Security Council Report of the Secretary-General, S/2021/312 art. 5 (2021)

¹⁵ Anette Bringedal Houge – Kjersti Lohne: End Impunity! Reducing Conflict-Related Sexual Violence to a Problem of Law, Law & Society REVIEW, p. 760, available: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/lasr.12294>, downloaded 2021.11.27.

¹⁶ András Hárs: Sexual Exploitation and Abuse in United Nations Peace Operations – With Special Regard to Implications of Responsibility in International Law, PhD Dissertation (2021) p. 82

¹⁷ United Nations Secretariat Secretary-General’s Bulletin: Special measures for protection from sexual exploitation and sexual abuse, ST/SGB/2003/13, Section 1

¹⁸ Ibid. Section 3.2

¹⁹ Elijah Mwasi Mwanyika: Sexual Exploitation and Abuse by Intervention Forces in Central African Republic, African Journal of Empirical Research Vol2. (Iss. 1) 2021, p. 64

vetting and training, flaws of the reporting, investigating and enforcement system and the sense of impunity.²⁰

2.4. Sexual Harassment

The definition of sexual harassment includes any improper or unwelcome conduct, request for sexual favour, verbal or physical conduct or gesture of a sexual nature or any behavior of sexual nature that might be expected to lead to offence or humiliation. When the conduct interferes with work is made a condition of employment or creates an offensive or intimidating work environment.²¹

In case of sexual harassment, both the perpetrator and victim are personnel of the operation. The harasser is usually the victim's supervisor, employer, who improperly uses his/her power, authority or influence. Both males and females can be either victims or perpetrators; also, they do not necessarily belong to the opposite sex.²²

In most cases, the lack of prevention and discipline, inadequate leadership, flaws of the reporting and enforcement mechanisms and the sense of impunity are the reasons that make the misconduct occur.²³

2.5. Summary

As shown in the previous sub-sections, sexual offenses are traced back to a number of different causes. In some situations, there are no specific reasons at all, because the cultural and religious habits perceive such acts to be "normal". Meanwhile, in other cases the presence of an armed conflict - that weakens state authority, including its criminal justice system - is the hotbed of misconduct. In case of SEA and sexual harassment – when the perpetrators belong to the personnel of the operation – the main motivation factors were lack of preparedness and malfunctioning of the international community (inadequate vetting, training, reporting and investigation), and/or the lack of accountability by the sending state (lack of enforcement, sense of impunity). In some cases, prostitution is accepted legally and culturally, in both the sending and the host state. In these cases, special emphasis must be placed on the introduction of an applicable code of conduct, which – despite the legislation applicable in the mentioned

²⁰ András Hárs: Ibid. p. 80

²¹ United Nations Secretariat Secretary-General's bulletin: Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority, ST/SGB/2008/5 Section 1, Definitions 1.2-1.3

²² Ibid. Definitions 1.3-1.4

²³ András Hárs: Ibid. p. 80

territories – prohibits sexual activity with persons under the age of 18, buying sex from prostitutes and engaging in sexual activity with the local population.

Long-term effects have serious consequences on both victims, perpetrators and the UN itself. Violating the human rights of the victims involve physical and psychological trauma. There is a high risk of infection with sexually transmitted diseases or getting pregnant, resulting in infants who become outcasts of the community. In some communities, the phenomena of blaming and shaming victims was also present, which further aggravated the worrisome situation of the victims. As most perpetrators are not held accountable, there is a high risk for them returning to another operation and committing the same or similar acts in the future. This firstly, sets a bad example and serves as an obstacle in peace processes as depriving resources. Secondly, it undermines the efficiency of the international community and the reputation of the UN.²⁴

Out of the four main categories, the phenomena of CRSV and SEA are the most visible in the current operations - particularly in MINUSCA and MONUSCO.²⁵ Although, this does not mean that managing and eradicating SGBV and sexual harassment would be an easier task. The underreporting and the lack of focus in investigation in fact rules out the possibility of completely eliminating or preventing any forms of sexual offenses.

²⁴ Jasmine-Kim Westerndorf: *Violating Peace – Sex, Aid and Peacekeeping*, Cornell University Press, Ithaca and London (2020) p. 95-114.

²⁵ Gabriella Venturini (ed.): *Integrating Gender Perspectives into International Operations, A Training Handbook with Commentaries*, International Institute of Humanitarian Law, Sanremo (2019) p. 2.

Chart 1: Differentiation of sexual offenses (GBSV, CRSV, SEA and sexual harassment), own editing based on the data of the source²⁶

	GBSV	CRSV	SEA	Sexual harassment
perpetrator	anyone	state (military, police, para-military organizations under state control) and non-state actors (rebels, militia, organized criminal network)	civilian or military personnel of the operation	personnel of the operation
victim	anyone belonging to the targeted sex	civilian population	person belonging to the civilian population	personnel of the operation
goal and nature	any harmful act directed against individuals or groups of individuals on the ground of their gender	abusing the armed conflict and the weakened state of authorities to commit crimes of sexual nature	using the difference in power to obtain sexual favours (exploitation); physical intrusion of sexual nature (abuse)	create a connection of sexual nature with the victim
circumstances facilitating the commission of the act	no specific reason required – usual facilitating factors include cultural and religious traditions, stereotypes	armed conflict, state of the country	inadequate vetting and training, reporting, investigation and enforcement, sense of impunity	lack of discipline, reporting and enforcement mechanisms, inadequate leadership, sense of impunity

²⁶ András Hárs: Ibid. p.79- 80.

3. SEXUAL OFFENSES COMMITTED IN UN PEACE OPERATIONS

Sexual offenses committed in UN peacekeeping operations is a long-standing problem. Since the first allegations emerged in the 1960's in Congo, there have been reports about misconduct committed all over the world. Several allegations highlight the involvement of peacekeepers in brothels, prostitution, human trafficking, rape and sexual harassment.

The phenomena of SEA first emerged in the United Nations Transitional Authority in Cambodia (UNTAC) when in 1993, the number of prostitutes grew from six thousand to twenty-five thousand after the UN arrived. As result, Cambodia's HIV rates significantly rose and sexually transmitted diseases spread among prostitutes. Numerous women working in brothels reported UNTAC costumers were disorderly behaving, yet the mission's Special Representative to the Secretary-General (SRSG) replied, "*Boys will be boys*", and no action was taken.²⁷ In 1995, another misconduct was brought to attention from Bosnia-Herzegovina, as evidence emerged of trafficking of women to work as sex slaves in a brothel, visited mostly by UN personnel. It took 4 years until the media raised public awareness and prompted the United Nations Mission in Bosnia Herzegovina (UNMIBH) and the Office of the Higher Commissioner for Human Rights (OHCHR) to acknowledge the problem and provide adequate protection to the victims. In its response, the UN adopted a limited definition of trafficking, excluding women who were aware of the fact that they would work as prostitutes after arriving to the country from any forms of protection or support services. Nevertheless, two gender advisors suggested the UN has zero responsibility towards them, as they are "*migrant prostitutes*."²⁸ After, in 2001, an investigation in West Africa verified UN personnel and NGO staff exploiting and abusing local women and girls in refugee camps. The documentation verified sexual relationship in exchange for school fees and food, and violent rape of girls and boys in refugee camps.²⁹ After this case, major change came as former Secretary-General Kofi Annan released a report, declaring sexual exploitation cannot be tolerated and UN employees who became perpetrators have to be held accountable and prosecuted.³⁰ The General Assembly - as its response - adopted a resolution directing the Secretary-General to extend preventative

²⁷ Independent: Profile: Bureaucrat at large in the Balkans: Yasushki Akashi, almost painfully diplomatic UN envoy, available: <https://www.independent.co.uk/voices/profile-bureaucrat-at-large-in-the-balkans-yasushi-akashi-almost-painfully-diplomatic-un-envoy-1373287.html>, last seen: 2021.12.10.

²⁸ Jasmine-Kim Westerndorf: Ibid. p. 23.

²⁹ Jasmine-Kim Westerndorf: Ibid. p. 24.

³⁰ Report of the Secretary-General on the activities of the Office of the Internal Oversight Services: Investigation into sexual exploitation of refugees by aid workers in West Africa, A/57/465, Note 3.

and remedial measures, which encouraged other UN bodies and NGOs to do so.³¹ The UN finally took action, yet numerous acts of SEA were still reported.

3.1. MONUSCO

Not so late after the West Africa incident another scandal erupted in the African continent. Series of outrageous wrongdoing were reported in the DRC. In 2003, rebel groups attacked the eastern parts of the DRC – including the town of Bunia, in the Ituri region. Inhabitants of the town and the surrounding areas tried to seek shelter in MONUC's headquarters and troops' camp, hoping that troops will protect them from the attacks. Many women and girls had been raped, becoming the victims of fighting militias. As they were left behind with children to take care of and no husband, they were stigmatized by their family and became outcasts of their community. When looking for help, they used to climb the fence of the camp where peacekeepers offered food as payment for having sex with them. Personnel of NGOs working in camps were aware of the visits, yet they said "*there is nothing to stop them, and the girls need food.*"³²

In 2004, the Independent launched an investigation about the wrongdoings, which made the UN investigate the charges. In June, a coded cable was sent to the head of the mission. The document reported 50 allegations of abuse including Moroccan, Pakistani and Tunisian troops - 42 included acts with minors. The details involved rape of minors near the refugee camp in Bunia and the existence of a network of minor prostitutes at the MONUC's airport, run by contingents and personnel. Later, further allegations were reported until the numbers rose to 72. The UN sent an independent team to investigate which was flawed as no protection was provided for the victims and witnesses. Furthermore, 150 allegations were reported through the country, but the team only investigated in Bunia.³³

In 2010, the Security Council (SC) renamed MONUC to MONUSCO. (Partly) due to the widespread accusations of SEA, it became obvious that the mission was unable to protect

³¹ United Nations General Assembly: Investigation into sexual exploitation of refugees by aid workers in West Africa, A/RES/57/306

³² Kate Holt – Sarah Hughes: Sex and death in the heart of Africa, available: <https://www.independent.co.uk/news/world/africa/sex-and-death-in-the-heart-of-africa-564563.html>, last seen: 2021.12.10.

³³ Independent: Sex and the UN: when peacemakers become predators, available: <https://www.independent.co.uk/news/world/africa/sex-and-the-un-when-peacemakers-become-predators-486170.html#comments-area>, last seen: 2021.12.11.

civilians and a new approach was required.³⁴ Despite the change, the path continued as changing the name did not change the culture.

By selling themselves to peacekeepers, young women can earn more money than they normally do in a month. In the city of Bukavu, a young girl Aziza was trying to make ends meet by selling bananas. When men offered her five dollars in exchange for sex – as she confessed - “*I didn’t have the strength to refuse.*” After some days, the peacekeepers returned and tried to demand more. When Aziza decided to refuse, she ended up beaten by the men. She was contracted with a sexually transmitted disease, which for her family banished her. Ended up with no support, she decided to return to the peacekeepers.³⁵ Such stories are not extraordinary.

The culture of the host country is a determining factor when analyzing the prevalence of SEA. In the 2009 annual year more than 15.000 cases of sexual violence were reported in the DRC.³⁶ CRSV is a common form of misconduct amongst armed forces – including both rebel militias and the national army – which is unpunished, due to the breakdown in governmental authority, the incredibly weak judicial system and economic vulnerability culminating in prostitution.³⁷ Rape is simply considered “*something that happens in the DRC*”.³⁸ It also worth mentioning the culture of TCCs. The highest number of allegations in MONUSCO are linked to six countries: Morocco, Nepal, Pakistan, Tunisia and Uruguay.³⁹ One thing that is common in the domestic legislation of each country is that while the legal protection of women is enacted, the respective law enforcement is either unable or unwilling to prosecute sexual abuse. This fact is most likely to have an impact of the personnel’s behavior when deployed abroad, to peace operations.⁴⁰ Regarding the TCCs, another issue is the lack of female personnel on both military and the civilian side. The mission made a number of efforts to improve the gender balance of its personnel, but failed to achieve its goals on either the military or civilian side. On the latter, it is a challenge that the DRC is not a place of family service. This explains the lack of representation of women, especially in the middle of their careers. In addition, it proves difficult to find candidates with the necessary expertise who are fluent in both English and

³⁴ United Nations Security Council Resolution SC/RES/1925 (2010)

³⁵ Gerard DeGroot: Not Just a ‘Women’s Issue’: Gender and UN Peace Operations, available: <https://reliefweb.int/report/world/not-just-womens-issue-gender-and-un-peace-operations>, last seen: 2021.12.11.

³⁶ Human Rights Watch: World Report 2012: Democratic Republic of Congo, available: <https://www.hrw.org/world-report/2012/country-chapters/democratic-republic-congo>, last seen: 2021.12.11.

³⁷ Bonnie Kovatch (2016) Ibid. p. 161-163.

³⁸ Kovatch (2016) p. 162.

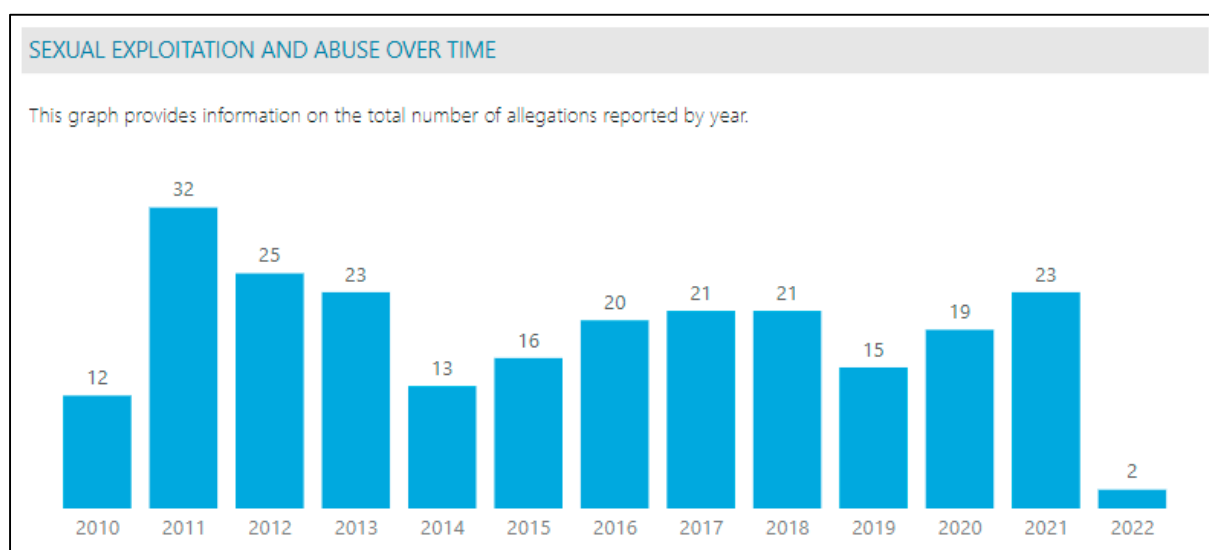
³⁹ Kovatch (2016) p. 164.

⁴⁰ Kovatch (2016) p. 168.

French. On the former side, the number of women in the quotas is determined by the countries sending the troops.⁴¹

The UN has been publishing figures on abuses – and a table of allegations since 2015. Besides this database there are only a few of local investigations led by individual researchers – so with no reservations we must start from what the UN publishes. According to their informations, since MONUSCO was launched in 2010 there have been 216 allegations reported in total and 22 in the 2021 annual year:

Chart 2: Number of allegations reported in MONUSCO⁴²



Comparing these numbers to MONUSCO's predecessor, a significant decrease is observed. The number of allegations reported in MONUC in the 2007-2009 interval was between 59-40, which is on average around twice as large as numbers experienced in case of MONUSCO.⁴³ The declined observed in the figures is welcomed, although the numbers in the past years have remained steady. Furthermore, the number of allegations reported in MONUSCO is remarkably higher compared to other UN led peace operations, especially if we consider the fact, that the Table of Allegations database groups multiple allegations together under a single perpetrator.⁴⁴

⁴¹ Department of Peacekeeping Operations – Department of Field Support: Final Report to the United Nations: Ten-year Impact study on Implementation of UN SC RES 1325 (2000) Women, Peace and Security in Peacekeeping, (2010) available: https://archive.globalpolicy.org/images/pdfs/10year_impact_study_1325.pdf, downloaded 2021.12.11.

⁴² Conduct in UN Field Missions: Sexual Exploitation and Abuse – Allegations – MONUSCO, available: <https://conduct.unmissions.org/sea-data-introduction>, last seen: 2022.03.04

⁴³ Conduct in UN Field Missions: Sexual Exploitation and Abuse – Allegations – MONUC, available: <https://conduct.unmissions.org/sea-data-introduction>, 2021.12.30.

⁴⁴ Code Blue: Review of the Secretary-General's Special Measures Report Released March 19, 2021 (A/75/754), available: <http://www.codebluecampaign.com/analysis2020>, last seen: 2021.12.30.

3.2. MINUSCA

UN lead operation MINUSCA deployed to the Central African Republic in 2014 also caused great outrage in the international community. Due to the ongoing armed conflict in the country, the situation of civilian population was already vulnerable, as they had to suffer grave violations of human rights, including CRSV. Considering the fragile security, humanitarian and political situation of the country, MINUSCA was deployed with the protection of civilians as its utmost priority.⁴⁵ Yet, one of the greatest SEA scandals erupted in 2015, when UN peacekeepers were accused of committing numerous forms of misconduct during mission.⁴⁶

The alleged perpetration took place between December 2013 and June 2014 at a center for IDPs near the Bangui airport. In May 2014, an OHCHR human rights officer and a UNICEF staff member conducted interviews, when an 11 years old reported a French soldier who offered him food in exchange for oral sex, brought him to the base and raped him. He gave a description of the soldier and stated he could possibly identify him on photo. Even though the officer promptly forwarded the interview notes to the officials of MINUSCA, no one sent warnings to soldiers nor informed French authorities or alerted civilians living in the IDP camp.⁴⁷ In the interviews led by OHCHR and UNICEF specialists in May and June, numerous – in some cases orphan and homeless - boys described they were abused and sexually exploited: a 9 years old said he and his friend were sexually abused by two soldiers at camp, when they were looking for something to eat at the checkpoint.⁴⁸ Another child described soldiers forcing him and his friend to carry out an act of sex. Some children said they were raped and given a bottle of water after.⁴⁹ Officials of UN in MINUSCA, Geneva and New York received the report about the interviews, including in total sexual abuse of 13 children by 16 peacekeepers – 11 from France, 3 from Chad and 2 from Equatorial Guinea and 7 more peacekeepers solicited children or acted as accomplices.⁵⁰

⁴⁵ United Nations Peacekeeping, MINUSCA: MINUSCA Fact Sheet, available: <https://peacekeeping.un.org/en/mission/minusca>, last seen: 2022.01.01.

⁴⁶ András Hárs: Ibid. p. 71.

⁴⁷ Code Blue: The UN's dirty secret: The untold story of Anders Kompass and peacekeeper sex abuse in the Central African Republic, available: <http://www.codebluecampaign.com/carstatement/>, last seen: 2022.01.01.

⁴⁸ Sandra Laville: UN aid worker suspended for leaking report on child abuse by French troops, available: <https://www.theguardian.com/world/2015/apr/29/un-aid-worker-suspended-leaking-report-child-abuse-french-troops-car>, last seen: 2022.01.01.

⁴⁹ Angelique Chrisafis: French soldiers interrogated in child sex abuse inquiry, available: <https://www.theguardian.com/world/2015/dec/08/french-soldiers-interrogated-in-child-sex-abuse-inquiry-central-african-republic>, last seen: 2022.01.01.

⁵⁰ Code Blue: Ibid.

Until mid-July 2014 a dozen of UN staff have seen the report, all of them were aware about the lack of action and alert while the abuse was – solidly proven - still ongoing. As there was no action taken from the UNs side, Anders Kompass, former field operations director at OHCHR decided to forward the document – that included misconducts such as the rape and sodomy of boys who were displaced by the fighting - to French authorities. On one hand, the authorities immediately launched an investigation. Despite all of this horror came to light, it took 19 months to start interrogations for the first time after accusations were made, while the soldiers alleged as perpetrators have not been publicly identified and it remained blurry, what they are suspected of. On the other hand, former UN High Commissioner for Human Rights, Zeid Ra’ad al-Hussein stated it was not until autumn 2014 that he became aware of what happened.⁵¹ Couple of months later when the SG submitted his 2014 annual report on the UN’s response to SEA, the report of child abuse was barely mentioned at all.

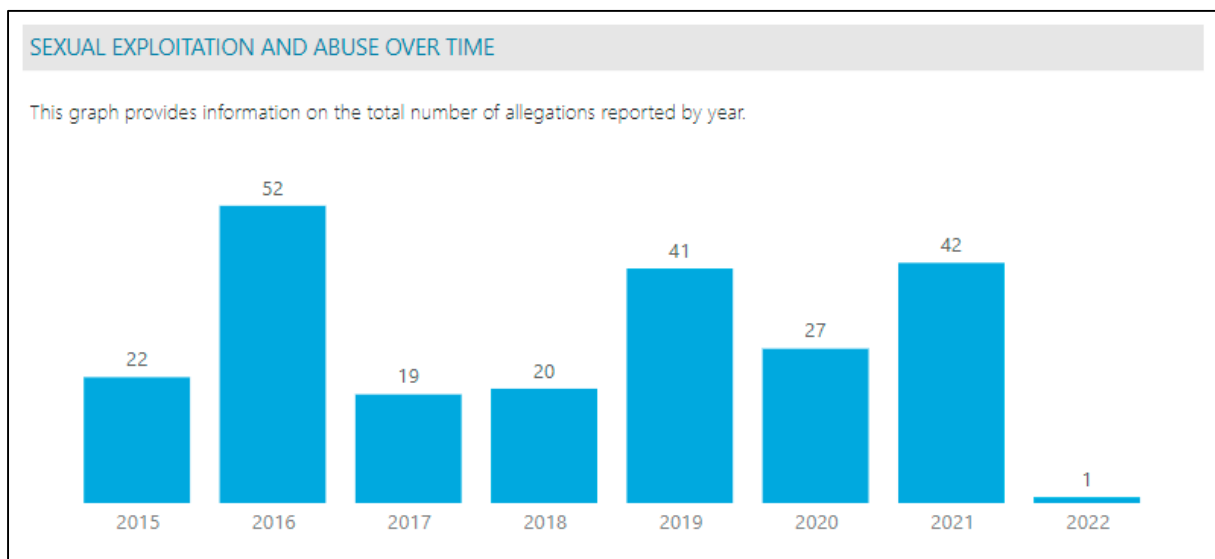
Consequently, his “*inappropriate alert*”, Kompass was accused of leaking confidential information to a third party and got suspended. He refused to resign and the UN initiated an investigation against him, saying he was breaching protocols. After months of lawsuit, in May 2015 an appeal tribunal cleared Kompass - concerning doubts about the legality of his suspension – and demanded the OHCHR to reinstate him. Even though Kompass was exempt from the charges, he announced his resignation saying “*The complete impunity for those who have been found to ... abuse their authority, together with the unwillingness ... confirms that lack of accountability is entrenched in the United Nations. This makes it impossible for me to continue working there.*”⁵²

After such institutional failure, the UN and its officials would be expected to take responsibility and put more effort into implementing the zero tolerance policy, yet numbers of allegations were still reported.

⁵¹ Statement by Zeid Ra’ad al Hussein, OHCHR, available: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/55661448e4b0b7578fd8dfd3/1432753224562/04-4+-+Statement+by+Zeid+Ra%27ad+Al+Hussein%2C+OHCHR+-+March+29%2C+2015.pdf>, downloaded: 2022.01.01.

⁵² Sandra Laville: Child sex abuse whistleblower resigns from UN, available: <https://www.theguardian.com/world/2016/jun/07/child-sex-abuse-whistleblower-resigns-from-un>, last seen: 2022.01.01.

Chart 3: Number of allegations reported in MINUSCA⁵³



According to UN data, there have been 220 allegations reported in MINUSCA since 2015 in total and 42 in the 2021 annual year, which means crimes committed in the 2014 that have been mentioned previously - and presumably, many others – have not been counted. Furthermore, in 2016 – a bit more than a year after the scandal erupted - there have been 104 allegations reported in total from the ongoing missions.⁵⁴ Considering these numbers and data from further UN missions, it can be stated half of SEA allegations have been reported from the CAR.

The crucial amount of allegations reported for MINUSCA can be traced back to two main reasons. The first set is associated with the high level of CRSV that was already present in the CAR due to such causes like the conflict-related situation, extreme poverty, displacement of vulnerable populations and the phenomena of forced prostitution – mostly among women and girls. As sexual violence became a public health issue, Médecins Sans Frontières (MSF) an independent medical humanitarian organization launched a project in 2017, in order to help survivors who seek medical, psychological and psychosocial care. Since then they have helped more than 6000 people – among 95% were women and girls and 52% minors.⁵⁵ The second reason has more to do with the UN and TCCs. According to UN data, most allegations in the CAR are related to troops coming from the DRC – where rape culture is prevalent among not

⁵³ Conduct in UN Field Missions: Sexual Exploitation and Abuse – Allegations – MINUSCA, available: <https://conduct.unmissions.org/sea-data-introduction>, last seen: 2022.03.04.

⁵⁴ Conduct in UN Field Missions: Sexual Exploitation and Abuse – Allegations – all missions, available: <https://conduct.unmissions.org/sea-data-introduction>, last seen: 2022.01.01.

⁵⁵ Médecins Sans Frontières – Project Update: Healing the visible and invisible wounds of sexual violence in CAR, available: <https://www.msf.org/car-healing-visible-and-invisible-wounds-sexual-violence>, last seen: 2022.01.01.

only rebel militias but also members of the national army.⁵⁶ In such case, it should be the responsibility of the UN to ensure all peacekeepers are trained to the zero tolerance policy on SEA and vetted prior to deployment. On the other hand, member states should ensure to put more effort and take effective measures to investigate the crimes and bring those who responsible to justice and provide adequate support to victims – unlike it happened in the case of MINUSCA.⁵⁷

3.3. Summary

The UN has faced severe criticism related to its failure to act against sexual offenses. In 2010 Margot Wallström, the Secretary-General's Special Representative on Sexual Violence in Conflict described the Democratic Republic of Congo as the "*rape capital of the world*" right after her visit to the country.⁵⁸ As numerous allegations emerged about UN troops raping children in the Central African Republic, in 2015, former UN Secretary General Ban Ki-moon called SEA "*the cancer in our system that is doing grave harm to the lives of the people we are meant to protect and serve.*"⁵⁹ In 2013, a UN investigation called SEA "*the most significant risk to UN peacekeeping missions, above and beyond other key risks including protection of civilians.*"⁶⁰ The examples presented in this chapter, undeniably confirm this statement in particular in the cases of the two analyzed mandates.

For both missions a civil war situation prevailed in the host state, which served as a hotbed of sexual violence and many other human rights violations. State institutions collapsed by the armed conflict were unable to protect civilians, thus this responsibility was left to peacekeepers. As many of the local people were homeless, living on the streets or in IDP camps after fleeing their homes, their only one option to make money and find food was to engage in sexual act with peacekeepers, who, in numerous cases have abused their power and exploited the

⁵⁶ Conduct in UN Field Missions: Sexual Exploitation and Abuse – Allegations – MINUSCA, available: <https://conduct.unmissions.org/sea-data-introduction>, last seen: 2022.01.01.

⁵⁷ Human Rights Watch: Central African Republic: Rape by Peacekeepers, UN, Troop-Contributing Countries Should Hold Abusers Accountable, available: <https://www.hrw.org/news/2016/02/04/central-african-republic-rape-peacekeepers>, last seen: 2022.01.01.

⁵⁸ United Nations – UN NEWS: Tackling sexual violence must include prevention, ending impunity – UN officials, available: <https://news.un.org/en/story/2010/04/336662>, last seen: 2021.12.10.

⁵⁹ Secretary-General's remark to Security Council consultations on the situation in the Central African Republic, 13 August 2015, New York

⁶⁰ Thelma Awori, Catherine Lutz and Paban Thapa: Final report – expert mission to evaluate risks to SEA prevention efforts, UN, New York (2013) p. 1.

vulnerability of local civilians. Victims in most cases were women and children – not just young girls but boys included too.

The risk of misconduct is more frequent among peacekeepers who had been deployed from such TCCs, where the legal protection of victims is enacted and respective law enforcement is either unable or unwilling to prosecute sexual abuse. Such cases are common in TCCs, which are not just contributors, but in the meantime also serve as host states for ongoing UN peace operations (e.g. the DRC with MONUSCO, or Pakistan with UNMOGIP). Personnel from these countries are less likely to reach the necessary level of adequate vetting and training. Another common issue present in both missions is the lack of female personnel on both uniformed and civilian side. According to the latest fact sheets, in MONUSCO only 6% of uniformed and 24% of civilian personnel, in case of MINUSCA 6% of uniformed and 28% of civilian personnel are women.⁶¹ In total, in the currently ongoing UN led peace operations more than 90% of military and police personnel, 80% of the leadership and 70% of civilian staff are men.⁶² These numbers are crucial, if we consider the fact that there are no confirmed allegations against female peacekeeping personnel.⁶³ On the contrary, it is a proven fact, that having female officers helps to build trust and ties between the UN and local women and encourages them in case of any violations to report misconduct and ask for medical help.⁶⁴

There are further doubts, regarding the UN's public database. First, there is no detailed table about allegations reported before 2015. Second, even the Table of Allegations database remains incomplete and fails to provide truly transparent information. The Table is not possible to download into a report or other formats that would enable readers to easily analyze data. On the other hand, the fact, that number of allegations and victims are undercounted makes it even more complicated to summarize data. In the Table, numerous allegations are multiplied to the same perpetrator and are counted as one allegation. For instance, in December 2021 there is an allegation regarding a Gaboni military contingent member. The date of the incident remains unspecified. The allegation includes sexual abuse, more precisely the rape of children. The number of victims is seven; however, there is no further specification about the age of the

⁶¹ United Nations Peacekeeping, MONUSCO: MONUSCO Fact Sheet, available: https://peacekeeping.un.org/sites/default/files/monusco_aug20.pdf and Ibid. MINUSCA, MINUSCA Fact Sheet, available: https://peacekeeping.un.org/sites/default/files/minusca_aug20.pdf, downloaded: 2022.01.02.

⁶² Pablo Castillo Díaz: Where are the women: The missing question in the UN's response to sexual abuse in peacekeeping operations, Security and Human Rights 27 (2016), p. 30.

⁶³ Ibid.

⁶⁴ Pérola Abreu Pereira – Giovanna Kuele: My year in Africa: Why This Brazilian Woman Peacekeeper Wants to Return, available: <https://www.passblue.com/2019/09/10/my-year-in-africa-why-this-brazilian-woman-peacekeeper-wants-to-return/>, last seen: 2022.01.02.

victims. Despite the issues regarding underreporting and uncertainties, there were some promising initiatives aimed to start the dialogue and find a solution for the phenomenon of SEA.

4. RESPONSE OF THE UN

The first investigation regarding allegations of SEA took place in 2001 by the Office of Internal Oversight Services (OIOS). The report reviewed allegations about UN staff members and peacekeepers committing sexual exploitation against female refugees. Nevertheless, the report also examined the relations between the vulnerability and susceptibility of female refugees and the circumstances, which under refugee camps are operated. Finally, the recommendations of the report had been adopted in a General Assembly Resolution, which requested further preventative measures in peacekeeping operations.⁶⁵

Since the adoption of the Secretary-General's bulletin in 2003, policy development has accelerated significantly. A number of bodies had been set up to investigate and prevent misconduct, compensate victims and hold perpetrators accountable. However, several policies and legal frameworks – such as the UN Charter, International Human Rights Law and International Humanitarian Law – had already been existing in order to set up examples regarding the respect for human rights, establishing standards and outlining general obligations for peacekeepers.⁶⁶ This adequately demonstrates that while the UN was very concerned with regulation at the global level, in practice it still had to tackle implementation issues. Nevertheless, the scandals erupted in MINUSCA and MONUSCO called for an urgent shift in approach and demanded the UN to put more effort into implementing effective measures on the fields.

4.1. The Zeid Report, 2005

The revelations in 2004 of peacekeepers committing SEA in the DRC have done great harm to the image of the UN and its peacekeepers. It was clear that measures placed to address SEA were insufficient and a brand new approach was required. For this reason, former UN Secretary-General Kofi Annan asked His Royal Highness Prince Zeid Ra'ad Zeid Al-Hussein, former Permanent Representative of Jordan – and later United Nations High Commissioner for Human Rights (UNHCHR) – and civilian peacekeeper to prepare a report on SEA in UN peacekeeping operations.⁶⁷ The report was made available in 2005 and served as the first comprehensive

⁶⁵ Suk Chun: Sexual Exploitation and Abuse by UN Peacekeepers, International Peace Research Institute (PRIO), Policy Brief, 10/2009 (2009), Oslo

⁶⁶ Jasmine-Kim Westerdorf – Louise Searle: Sexual exploitation and abuse in peace operations: trends, policy responses and future directions, Oxford University Press on behalf of The Royal Institute of International Affairs, Oxford (2017) p. 376-377.

⁶⁷ ZEID REPORT: Report of the Secretary-General's Special Advisor, Zeid Ra'ad Zeid Al-Hussien, On a Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations, A/59/710, 2005, para 3.

analysis of the phenomena of SEA by peacekeeping personnel. The report served as an acknowledgement by the SG that SEA was a serious issue that requires serious measure to be solved. The released report contained bold recommendations related to the main areas:

- Applying current rules on standards of conduct to all categories of personnel – including military contingents;
- Setting up a permanent investigative mechanism to investigate SEA;
- Requesting accountability from the UN regarding extensive training;
- Implementing the measures to eliminate SEA into the goal of civilian and military leaders;
- Requesting individual disciplinary, financial and criminal accountability – such as dismissal from the UN and liability to victims;
- Amending the Memorandum of Understanding (MoU) to require TCCs to report about actions taken on cases related to UN investigations.⁶⁸

Based on the recommendations, the following steps had been taken by the UN:

- Rules on standards of conduct system has undergone a check-up and were clarified for both military contingents and civilian personnel;
- The Conduct and Discipline Unit (CDU) got established in order to organize such activities like training, monitoring, enforcement of military and civilian personnel and the reinforcement of investigation mechanisms;
- Measures for training and outreach got standardized for both military and civilian personnel;
- More severe measures – such as curfew, off-limit establishment, off-duty uniform, hotlines for abuse report – had been introduced;
- Protocols for support and assistance to victims had been released;
- MoUs had been revised to lay out obligations of states regarding their troops.⁶⁹

The UN's implementation strategy regarding the recommendations can be divided into 3 main categories: prevention, enforcement and remedial measures. It was obvious, that inadequate training and vetting was among the top causes of SEA, thus the improvement in quality was

⁶⁸ Jenna Stern: Reducing Sexual Exploitation and Abuse in UN Peacekeeping – Ten Years After the Zeid Report, Civilians in Conflict Policy Brief No. 1 (2015) p. 11.

⁶⁹ Ibid.

expected to be a decisive preventative measure. After the Zeid Report, preliminary training had been requested for all personnel upon arrival – for civilians led by the DPO (formerly the Department of Peacekeeping Operations - DPKO) – for uniformed personnel led by the TCCs. In order to support TCCs, the CDU is constantly developing and sharing training modules – both face-to-face and online format - and materials, translated to the national language of staff. Underreporting in numerous cases could be led back to the fact, that in many communities sexual violence is not even considered a serious crime unless it leads to the death of the victim.⁷⁰ For this reason reaching and educating local communities in host countries about understanding and recognizing SEA is considered critical. In the DRC, such activities focused on sensitizing locals, in particular youth.⁷¹ Although, trainings had been provided regularly since then, they are unlikely to have long lasting affects due to their brevity. The UN should continue to improve its tools and modules and its education activity towards communities.

Enforcement mechanisms include receiving and handling complaints, tracking follow up actions and investigations by the OIOS, which is independent from the mandates. Latter condition is important and fulfills one of the main recommendations of the Zeid Report. If such mechanism would depending on the leadership of the mission, a risk of concealing allegations would have might occur. Instead, OIOS is responsible for investigating allegations, which in case are substantiated, the UN has the responsibility to remove perpetrators from the mission and exclude them from service in the future. Another step forward was the amendments of MoUs in 2007. Since then TCCs are obligated to report the CDU about the outcome of investigations and prosecutions. Even though first most TCCs neglected this requirement, by the “partnership approach” – which means systematic follow-ups, monthly reminders and emphasis on communication by the CDU - had proven to be successful. In 2008 the first global database and tracking system for allegations was launched. The graphs showed the numbers of allegations reported in a yearly basis. In 2015, it was further developed and since then the Table of Allegations shows detailed informations regarding the allegations reported.⁷² Although, reporting obligations had proven to be useful, there are still many doubts about reliability and transparency. As it was seen in the case of Kompas, the UN also tends to disregard its obligations and ignore misconducts. For this reason, the OIOS should strengthen its independence and put more effort on both the UN and TCCs. Last, but not least, the tracking

⁷⁰ Pérola Abreu Pereira – Giovanna Kuele: Ibid.

⁷¹ Jenna Stern Ibid. p. 13.

⁷² Ibid. p. 14.

system and the Table of Allegations should be developed further to clarify blurry specifications and most importantly the numbers of perpetrations.

The remedial action prong encourages using already existing local services and establishing new assistance mechanisms for victims of SEA in every host countries. Regarding the latter, the UN attempted to fulfill criteria upon the 2009 report of the SG. The document calls on parties to provide legal, medical and psychological care and facilitating the pursuit of child support, including paternity claims.⁷³ As the Comprehensive Strategy has no independent funding mechanism, the success of remedial actions rely on the preexisting networks of the host country. As it was seen in the case of CAR, it was the MSF, an independent medical organization launching a project to provide help to victims. Building partnership with these organizations is not easy, as potential partners often consider SEA a “peacekeeping related problem” and hesitate to cooperate with personnel of operations.⁷⁴ The lack of funding also makes it impossible to coordinate assistance mechanisms in geographically large countries – such as the DRC – where extensive travel is required to meet with local communities in person.⁷⁵

4.2. The Deschamps Report, 2015

The allegations emerged in 2014 against French troops in the CAR and the accusations that the UN received for mishandling the situation and allowing assault to continue while firing *Kompass*, had badly shaken the reputation of the organization. For this reason, former Secretary-General Ban Ki-moon decided to launch an independent, external investigation about the way the UN handled the affair. So far, it was the very first public intervention announced by the SG about SEA in UN peace operations.⁷⁶ The independent panel was chaired by former Canadian judge Marie Deschamps and included Hassan Jallow, prosecutor of the UN tribunal for Rwanda and Yasmin Sooka, executive director of Foundation for Human Rights in South Africa.⁷⁷

⁷³ Report of the Secretary-General: Implementation of the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel, A/64/176, 2009.

⁷⁴ Ibid. art. 57.

⁷⁵ Ibid. art. 64.

⁷⁶ Sandra Laville and Benn Quinn: UN chief orders review of handling of claims of child abuse by French soldiers, available: <https://www.theguardian.com/world/2015/jun/03/united-nations-child-abuse-french-soldiers>, last seen: 2022.01.05.

⁷⁷ Agencies at the United Nations: Panel to review UN response to alleged Central African Republic sex abuse, available: <https://www.theguardian.com/world/2015/jun/22/panel-to-review-un-response-to-alleged-central-african-republic-sex-abuse>, last seen: 2022.01.05.

The Panel had two main mandates. They had to make recommendations in two regards: first, they had to find out about the firing of Mr. Kompass and whether it was legal or not and second, they had to revise the reaction of the UN to the abuses.⁷⁸

The Report made the main following recommendations for improving the UN's response:

- Acknowledging SEA is a form of CRSV - even if the perpetrator is not under UN command – that must be addressed under the UN's human rights policies;
- Creating a Coordination Unit (CU) in OHCHR that reports directly to the HCHR and that has a supporting working group made up of experts from TCCs;
- Reporting allegations immediately must be mandatory;
- Establishing an investigative team under CU authority to deploy immediately in case of reporting;
- Entrusting the working group to review Un policies dealing with confidentiality;
- Establishing a Trust Fund in order to provide specialized services to victims;
- Negotiating with TCCs to ensure prosecution in provisions and the inclusion of transparency and cooperation in agreements in case of accountability processes;
- Adopting an approach to immunity that assumes active participation of the UN in accountability processes;
- Perpetuate a comprehensive database.⁷⁹

The first recommendation was to address policies: there was a lack of clear policies, which caused confusion regarding responsibility.⁸⁰ The UN has two avenues, when it is about acting for human rights. There are human rights sections in New York and in Geneva at the OHCHR, both with their own, different policies. Therefore, when there is an allegation that could be prosecuted, the UN has no authority to institute proceedings before criminal courts. They – in case they decide to address allegations - can send a report to the TCC or the host country. Still, it is unclear, who will take responsibility for prosecuting perpetrators of criminal acts. Based on the recommendation of the Deschamps Report, the UN should create an independent

⁷⁸ Joanne J. Myers: A Climate of Impunity? The Problem of Sexual Abuse by UN Peacekeeping Forces, with Justice Marie Deschamps, available: https://www.carnegiecouncil.org/studio/multimedia/20171221-sexual-abuse-and-united-nations-justice-marie-deschamps?fbclid=IwAR1tDeEZSdgjpt_yx82hhDBl5GLqnWI0ORDE_jtBtX2qIQ9YQzChoGVSOwY, last seen: 2022.01.06.

⁷⁹ Marie Deschamps – Hassan B. Jallow – Yasmin Sooka: Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic, (2015) p. 79-94.

⁸⁰ Ibid. p. 10.

Coordination Unit with its working group and investigative team in the OHCHR and harmonize the policies in order to find a path, which leads to accountability. Yet, none of these happen to pass yet. Instead, a person has been appointed to oversee the issue of SEA and report to the SG. According to Ms. Deschamps, it is not the most sufficient solution as it lacks some kind of independence. UN staff are less likely to report to their superiors at the UN due to the fear being seen as troublemakers and losing their jobs.⁸¹ The Trust Fund started to operate in 2016 and Member States have been requested to contribute. The main problem with this is the fact that contribution is voluntary and relies on the generosity of the few donors who have the willing to help victims.⁸² To avoid this problem, the Fund could be part of the budget of peacekeeping missions and humanitarian operations, or made part of the regular budget of the UN – which are not depending on the whims of Member States.

In April 2016, the Code Blue campaign came public with the information that in April 41 allegations were reported in the CAR, which had further negative impact on the trustworthiness of the UN.⁸³ In his final speech in September, Ban Ki-moon expressed his regret about the issue of SEA and its effect on the organization and called on the Secretariat and the Member States to redouble their efforts.⁸⁴

In 2017, two years after the Report had been released Deschamps said “*not much has been done. Both Secretary-General Ban Ki-moon and Secretary-General Guterres are speaking up against SEA, but in practice I am less than sure that anything circulates to the UN because what we can observe are the very same problems that we have observed for decades.*”⁸⁵

4.3. Response in relation of COVID, 2020-2021

Nevertheless, it is also important to mention the impact of the COVID-19 pandemic. In March 2020, Secretary-General António Guterres called upon warring parties to “*put armed conflicts on lockdown and focus on the true fight*”.⁸⁶ Meanwhile, some conflicts cooled down, many

⁸¹ Joanne J. Myers: Ibid.

⁸² United Nations – UN News: ‘We have an agenda before us’ – UN officials reiterate need for measures against sexual abuse, available: <https://news.un.org/en/story/2016/05/529272-we-have-agenda-us-un-officials-reiterate-need-measures-against-sexual-abuse#.VzwjPTWLQdU>, last seen: 2022.01.06.

⁸³ Code Blue: Another 41 allegations of peacekeeper sex abuse undisclosed by the UN, available at: <https://us6.campaign-archive.com/?u=86708d9deb7fbd282b2aaab05&id=52a210eb9d&e=5f1fe10b47>, last seen: 2022.01.06.

⁸⁴ United Nations – United Nations Secretary General: Address to the General Assembly, available: <https://www.un.org/sg/en/content/sg/speeches/2016-09-20>, last seen: 2022.01.06.

⁸⁵ Joanne J. Myers: Ibid.

⁸⁶ United Nations - UN News: COVID-19: UN chief calls for global ceasefire to focus on ‘the true fight of our lives’, available: <https://news.un.org/en/story/2020/03/1059972>, last seen: 2022.03.04.

actors ignored the initiative. The CAR had to face violent clashes from 2020 April and the tension continued to evolve in the DRC as well.⁸⁷ As SG Guterres reported, the pandemic deepened the already existing inequalities and exposed vulnerable population – such as IDPs and children, most particularly girls - to an increased risk of SEA. Such groups were even more likely to be affected by abuse and violence.⁸⁸ It also worsened the possibilities for investigating allegations and assisting victims.⁸⁹ He further confirmed this in his 2021 annual report and highlighted that the exacerbation of impacts and the increase of number of allegations – in particular in MINUSCA and MONUSCO – is linked to the pandemic.

One of the main concerns was to avoid UN personnel to become the “source” of the disease. In the CAR, the first COVID-19 related case was reported from Italian personnel. The appearance of “MINUSCA-virus” – as locals referred to it - lead to severe xenophobia. In the DRC similar obstacles have been reported, which meant a threat to the mandate.⁹⁰ For this reason, the operational tasks have been limited to the most fundamentals – for instance activities related to the protection of civilians, humanitarian assistance, protection of force and key infrastructures. Operations that continued to work without disruption have been avoiding social interaction. Civilians also started to work remote, outside of the mission’s area.⁹¹ Limited contact between personnel and locals might serves as an explanation for limited number of abuse and the decreased number of allegations reported in 2020, however, from 2021 the numbers rise again.⁹²

However, at the same time communities were also exposed to many risks. Lot of funds were moved away from services in order to give adequate response to pandemic-related challenges. Many of the safe places where victims could have receive support and services have closed and it was more difficult to move around due to lockdowns and restrictions. This vacuum first can provide an opportunity for SEA to happen in exchange for medical supplies and assistance, second result in severe underreporting. As the spokesperson of the United Kingdom’s Department for International Development (DFID) said: “*We are absolutely clear the aid sector*

⁸⁷ Katharina P. Coleman: COVID19 and UN Peacekeeping: Posing Existing Global Governance Questions with New Urgency, Global Governance in the Age of COVID research project, Center for International Area Studies, Weinberg College of Arts and Sciences, Northwestern University, (2020) p. 1.

⁸⁸ Amanda M. Makosso: United Nations Peacekeeping Operations in the era of COVID-19, Simon Fraser University Vol. 3 No. 2 (2020) p. 31.

⁸⁹ United Nations General Assembly Resolution A/75/754 (2021) art. 4.

⁹⁰ Katharina P. Coleman: Ibid. p. 5.

⁹¹ Cedric de Conig: Examining the Longer-Term Effects of COVID-19 on UN Peacekeeping Operation, available: <https://theglobalobservatory.org/2020/05/examining-longer-term-effects-covid-19-un-peacekeeping-operations/>, last seen: 2022.03.07.

⁹² Report of the Secretary-General: Special measures for protection from sexual exploitation and abuse, A/76/702 art. 1-2.

*should be free from sexual exploitation, abuse, and harassment. We have made some progress on this issue... but there is more to do.”*⁹³

4.4. Summary

In a manner, the Zeid Report served as a landmark point. SEA was finally recognized as a serious problem that requires comprehensive, multi-tiered strategy, encompassing preventative, enforcement and remedial measures. It also provided a basis for action regarding the adoption of a wide range of measures. Yet unfortunately, it was incapable of having the needed transformative effect. Despite the high number of measures taken, years later the UN is still struggling with the same issues. Even though there are stronger policies and procedures regarding SEA, implementing these and holding the perpetrators accountable still remains a challenge. For this reason, it would be highly recommended for the UN to put more effort into prevention. They should further develop their training instruments and widen – especially computer-based – technologies and modules. It is also recommended to continue working with members and leaders of local communities and the police. Education and sensitization campaigns should be regular and more comprehensive in order to have long lasting affects and fight the misperception, which according to SEA is considered acceptable. In addition, the UN should enforce its standards regarding accountability. Prosecution of troops committing misconduct is still the primary responsibility of the TCC, but now it is required to report to the CDU on investigations and legal actions, which provides systematic check-ups and reminders. In order to do so, the OIOS should strengthen its independence and put more effort on these actors. Furthermore, developing the tracking system of allegations would prevent perpetrators to return to future operations. Last, but not least, improving the mechanisms regarding victim assistance are crucial. In-country and in-community partnerships must be developed in order to reach the victims. For this purpose, local organizations and NGO could provide significant contribution.

After the incident of the Sangaris Forces, the Secretary General decided to launch an investigation, which was the very first public intervention about SEA in UN peace operations. In his statement, he made no distinction between the Sangaris Forces and UN troops, which marks a significant change in the UN’s response, and approach. Involving international forces in peace operations possibly leads to the victimization of civilians, whether troops wear a blue

⁹³ William Worley: Sexual abuse in aid sector still ‘widespread’, available: <https://www.devex.com/news/sexual-abuse-in-aid-sector-still-widespread-97730>, last seen: 2022.03.07.

helmet or not. What happened in the CAR was the result of such systematic problems, that were already recognized in the Zeid Report. Yet, many recommendations of the Deschamps Report – for instance the foundation of the CU – have not been implemented and many contributions – for instance the financial support of the Trust Fund – is still “just” voluntary.

5. FORMS OF CRIMINAL LIABILITY

Due to the diverse functions of peace operations in the 21st century, there is much more interaction between personnel and the local population. As result, there is an increased risk that the civilians of the host state will suffer harm or injury from personnel involved in the operation. Such as in domestic legal systems it is also applicable in international law that a breach of obligations leads to responsibility. Yet in practice, it is not always the case as States and IOs tend to refer to certain circumstances in order to avoid their responsibilities.⁹⁴

In transposing international legal responsibility into the legal system, the International Law Commission laid down the foundations for examining the issue with two drafts. The international responsibilities of states are dealt with in the 2001 draft – which is legally binding – while the responsibilities of IGOs are dealt with in the 2011 draft – which is not yet binding. These Articles aim to shed light on the circumstances that might lead to an IO’s breach of international obligations and the consequences thereof.⁹⁵ For this reason, the Articles identify whether the misconduct is attributable to an IO or a state. However, while in the past years severe attention has been paid on reforming the accountability of the UN, there have been less proposals regarding the issue of addressing crimes committed by its peacekeepers.

Peacekeepers possess double affiliation as they belong to both the UN and still remain under the control of the sending state; hence they enjoy numerous privileges and immunities. Troops deployed by Member States are granted further protection from internal UN repercussions. These allow the UN and its personnel to implement their duties without violating the domestic legislation of host countries. However, it is questioned whether the necessity of such privileges and immunities is correct in case the UN and its personnel commit serious, non-duty-related offenses – such as sexual exploitation and abuse. Despite the Zero Tolerance Policy promoted by the UN, perpetrators in many cases evade accountability and remain unpunished. Neglecting

⁹⁴ András Hárs: *Ibid.* p. 143.

⁹⁵ Kristina Daugirdas: *Reputation and the Responsibility of International Organizations*, available: <https://academic.oup.com/ejil/article/25/4/991/385604>, last seen: 2022.01.12.

the prosecution is very harmful as it easily leads to perpetrators being deployed to further missions whilst having the opportunity to commit offenses repeatedly. Furthermore, it leaves victims alone in their fight for justice and compensation.⁹⁶ They say with great power comes great responsibility.⁹⁷ However, it does not seem to be true for peacekeepers and sending states. Even though recommendations have been made, reports have been adopted, and revised memorandums have been signed, only a minor change appeared, but not in the case of accountability. The result is nothing, but impunity. For this reason, finding a clear-cut solution for the prosecution of perpetrators is inevitable.

5.1. Accountability of perpetrators by Sending States

When allegations are made, the UN can decide to repatriate the concerned individuals. After that, the UN can offer its recommendations to the TCC and decide to ban the suspected individuals from future operations. When the concerned individuals are returned, they should be subject to the jurisdiction of the TCC. As it is laid down in the Model Status of Forces Agreement (SoFA), TCCs have the exclusive jurisdiction over their military components in case they are involved in criminal offenses.⁹⁸ The practice has been similar for other types of personnel too. Even though, the TCCs have no exclusive jurisdiction over other types of personnel, the UN usually refers the cases to the TCCs anyway.⁹⁹ However, these trials in most cases have to face several practical difficulties. The first one is the lack of access to evidence in the missions' host country. Unfortunately, most domestic prosecutors lack the expertise to work with victims and witnesses in international context. Even if they do not, victims and witnesses have to face their traumas and cultural taboos to provide evidence while fearing retaliation from their community.¹⁰⁰

Another key problem with accountability is the inadequate domestic legislation enabling extraterritorial prosecution. Some of them do not have the authority to extraterritorial prosecution in case of a domestic crime, or only have powers in case the act deemed to be criminal in the host country as well. This can easily lead to dead ends because the definition of

⁹⁶ Francesca Anand Lilly: Peacekeepers Or Perpetrators? Un Accountability In The Face Of International Immunities, University of New South Wales Law Journal Student Series No 20-07 (2020)

⁹⁷ Robert Cryer – Natalia Perova: Peacekeepers: Internationalist Protectors or National Perpetrators, Protected Either Way? Journal of Conflict & Security Law, Oxford University Press (2020) p. 503.

⁹⁸ Model Status of Forces Agreement, UN General Assembly Resolution A/45/594 art. 47 (c)

⁹⁹ Carla Ferstman: Criminalizing Sexual Exploitation and Abuse by Peacekeepers, Special Report, United States Institute of Peace, (2013) p. 4

¹⁰⁰ Ibid.

sexual abuse might be different in each countries¹⁰¹ – as it was described in Chapter 3. Frequently, even if legal tools make it possible for domestic justice systems to hold troops accountable, in reality it is unlikely to happen for political reasons as many TCCs use domestic pressure and encouraging them not to prosecute.¹⁰² In order to balance this pressure, the United Nations can rely on the Model MoU – that was amended in 2007 in response to the Zeid Report - which under the TCCs are obliged to launch an investigation in maximum 10 working days from the time of notification about allegations by the UN.¹⁰³ If they fail to do so, the UN may decide to launch its own investigation. However, in practice, it rarely happens, as both TCCs and the UN tend to ignore these obligations: TCCs are unlikely to deploy investigating officers, which would be necessary in order to conduct investigations. Even if investigations do take place, the UN is unlikely to compel TCCs to report the findings.¹⁰⁴ As the assurance cannot be enforced legally, it is up to the UNs morals to press the issue and to engage in the dialogue.¹⁰⁵ At the end of the day, these circumstances often prevent the alleged perpetrators from being prosecuted.

There were several allegations against peacekeepers from India getting involved in child prostitution and paying young girls to have sex with them. In 2008, an entire battalion was involved in a criminal process after allegations were reported in which they were accused of having a dozen children - as a result of sexual intercourse with local civilians during mission - left behind in the DRC. Based on the allegations the Indian Army launched an inquiry.¹⁰⁶ At the end, the Army came out blaming the UN for charging their soldiers who all – at least according to them – were found to be innocent.¹⁰⁷

As a result of such examples and in order to prevent similar ones in the future number of measures have been recommended and implemented. In 2016, the Security Council decided to give the SG the authority to repatriate whole units in case the TCC proves to be failing regarding

¹⁰¹ Rose Freedman: UNaccountable: A New Approach to Peacekeepers and Sexual Abuse, *The European Journal of International Law* Vol. 29. no. 3, (2018) p. 973

¹⁰² Ibid.

¹⁰³ Report of the Special Committee on Peacekeeping Operations and its Working Group on the 2007 resumed session, UN General Assembly A/61/19 (Part III) art. 7. 3 (a)

¹⁰⁴ Rose Freedman: Ibid. p. 972-973.

¹⁰⁵ Ferstman: Ibid. p. 5.

¹⁰⁶ Varinder Bhatia: Indian Army probes reports of its UN peacekeepers fathering kids in Congo, available: <https://indianexpress.com/article/news-archive/web/indian-army-probes-reports-of-its-un-peacekeepers-fathering-kids-in-congo/>, last seen: 2022.01.15.

¹⁰⁷ Gerald Caplan: Peacekeepers gone wild: How much more abuse will the UN ignore in Congo?, available: <https://www.theglobeandmail.com/news/politics/second-reading/peacekeepers-gone-wild-how-much-more-abuse-will-the-un-ignore-in-congo/article4462151/>, last seen: 2022.01.15.

the prosecution of its alleged perpetrators within six months and requested him to ensure the replacement from countries that uphold the standards of conduct and discipline and handle allegations appropriately.¹⁰⁸ Another – often disputed – concept under the new Memorandum is the “naming and shaming” of states who fail to carry out investigation and prosecution. However, it can be stated, that this tool is not a new one, as it is the most often used strategy of human rights groups – e.g. the UN’s Human Rights Council and its special procedures are based on naming and shaming human rights violators. As such monitoring efforts are disputed, several researches had begun recently to determine how effective the method is. From the perspective of the UN, it is understandable if they refrain to name and shame particular countries. As they lack their own army, they rely on the continuous support of TCCs to deploy personnel. However, this is somehow reciprocal, as the biggest TCCs are usually such countries, whose governments are dependent on the roughly 1400 dollars per peacekeeper per month reimbursement the UN pays. In the 2021 fiscal year, the top 3 contributors of uniformed personnel were Bangladesh, India and Nepal¹⁰⁹, such countries, whose troops had often been involved in SEA allegations – e.g. as described in the previous chapters, Nepal was one of the six countries with the highest number of allegations reported in MONUSCO while India have also been involved in numerous cases of misconduct. In order to maintain this fragile balance, the involvement of domestic actors in the naming and shaming process might be a good solution. Even though, international actors can provide resources and data, their activity might be counterproductive as such nationalist actors interpret them hypocritical, aggressive and interventionist.¹¹⁰ However, domestic actors – who often receive less attention in the process – are not just important regarding gathering information or raising awareness, but more likely to achieve change in case of most oppressive states. Indeed, the best strategy is to have pressure not just from above, but also below.¹¹¹

5.2. Accountability of perpetrators by the International Criminal Court

The International Criminal Court (ICC) is the world’s first permanent international criminal court, established by the Rome Statute. Currently it has 123 states parties – with the exception of the United States, Russia and China as SC permanent members. Although, it is not an organ

¹⁰⁸ United Nations Security Council S/RES/2272 (2016) art. 2.

¹⁰⁹ Contribution of Uniformed Personnel to UN by Country and Personnel Type, available: https://peacekeeping.un.org/sites/default/files/01-contributions_to_un_peacekeeping_operations_by_country_and_post.pdf, downloaded: 2022.01.15.

¹¹⁰ James C. Franklin: Human Rights Naming and Shaming: International and Domestic Processes, The Politics of Leverage in International Relations in International Relations, p. 55

¹¹¹ Ibid. p. 60.

of the UN, the referral of the SC or a State Party to the Rome Statute might trigger its jurisdiction. As one of its main goals is to end impunity, the Court *investigates and tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression* in case a state is either unable or unwilling to do so.¹¹² The Rome Statute contains a broader spectrum of sexual violence crimes than any previous instrument of international criminal law. It includes *rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity*¹¹³ as crimes against humanity and *rape, sexual slavery, enforced prostitution, forced pregnancy as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions*¹¹⁴ as war crimes. The ICC can exercise jurisdiction in four cases: if a crime was committed by a citizen of a State Party or in the territory of a State Party, or in a State that accepted the Court's jurisdiction or if the crime was referred to the Prosecutor by the UNSC pursuant to resolutions adopted under Chapter VII of the Charter.¹¹⁵

The ICC's jurisdiction is based on complementarity, as it is not intended to replace already existing and well working national systems.¹¹⁶ Under Art 17 the Statute details the circumstances of "unwilling" and "unable". According to this, a state can be considered unwilling, in case the alleged perpetrator is somehow being protected by the state that means the proceedings lack impartiality. In addition, inability refers to the collapse of the appropriate institutions.¹¹⁷ In order to ascertain their situation states must hand in reports to the UN, to help investigate the evidence. It is presumable that the ICC will have jurisdiction if the state remains to be unwilling to prosecute. Thus, it might serve as a motivation for states to comply with their obligations if they want to keep their authority – however, as it is discussed in the previous chapter, TCCs are often reluctant to investigate and report to the UN and not always prove to be the most reliable sources. The Court's secondary jurisdiction might be a great benefit in the second case. Developing and third world countries often lack a well-established judiciary that complies with the necessary standards and possess the expertise of judges and registrars. As the

¹¹² International Criminal Court: About the Court, available: <https://www.icc-cpi.int/about>, last seen: 2022.01.24.

¹¹³ Statute of the International Criminal Court, Done at Rome on 17 July 1998, in force on 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544; Art. 7 para (1) section g)

¹¹⁴ Ibid. Art. 8 para (2) section e) (vi)

¹¹⁵ International Criminal Court: About the Court, How the Court works, available: <https://www.icc-cpi.int/about/how-the-court-works>, last seen: 2022.02.05.

¹¹⁶ Ibid. How the Court works

¹¹⁷ ICC Statute Art. 17.

ICC already has these qualities, it might speed up the lengthy processes and serve as a base example for the sending states when establishing their new institutions.¹¹⁸

Despite all of these, there are two main reasons for why ICC mechanisms seem to be ineffective to hold peacekeepers who commit serious crimes accountable. First, the Court is intended to focus on international crimes, which differ from ordinary crimes committed on the international level. International crimes are committed on a systematic basis, aiming to oppress, destroy or subjugate the local population. These might include sexual violence crimes, but before the ICC, it is only relevant if the context includes a purpose for which the crime is perpetrated. There might be a basis for war crimes, crimes against humanity or even genocide in case rape is used as a tool to prevent the birth of children who belong to a certain group of people based on religion or ethnicity.¹¹⁹ Even though sexual misconduct in peace operations is widespread, there is no evidence to prove these acts are part of a large, systematic plan, aiming to target a certain group of local population.¹²⁰ SEA is rather depicted as a “*crime of opportunity*” which reflects the fact that peacekeepers commit misconduct because they have the opportunity to do so, not because they aim no target civilian population.¹²¹ This distinction is critical to mention when trying to answer the question why the ICC and other internationalized courts are unable to prosecute peacekeepers. Secondly, the ICC’s mechanisms aimed to prosecute those individuals who are the most responsible for the perpetration of international crimes. This includes military commanders and political superiors.¹²² Furthermore, it is also important to mention, that the ICC is seated in The Hague and does not provide assistance through the UN on the fields of the operation. This means that victims from the host state where the crimes occurred are unlikely to receive information about the jurisdiction of cases nor the fate of the perpetrator, even if there is any justice being done.¹²³ Thus, the prosecution of those who committed individual crimes is the responsibility of the TCC and must be done by national, rather than international courts.¹²⁴

¹¹⁸ Cassandra Mudgway: Sexual Exploitation and Abuse by UN Peacekeepers: Towards a Hybrid Solution, PhD Dissertation, p. 209-210. (2016)

¹¹⁹ Richard J. Goldstone Hon.: Prosecution Rape as War Crime 34 Case Western Reserve Journal of International Law (2002) 277.

¹²⁰ Rosa Freedman: Ibid. p. 978.

¹²¹ András Hárs: Ibid. p. 184.

¹²² ICC Statute Art. 28.

¹²³ Cassandra Mudgway: Ibid. p. 203.

¹²⁴ Rosa Freedman: Ibid. p. 977.

5.3. Accountability of perpetrators by Hybrid Courts

After it became obvious that international courts are inappropriate for prosecuting peacekeepers who became perpetrators of sexual offenses, proposals have been made for hybrid courts that might serve as a solution for prosecuting crimes in the international arena. Hybrid courts can be defined as mixed compositions, incorporating the advantageous aspects of national and international courts, generally operating within the domestic jurisdiction of the host state where the crime was committed.¹²⁵ Hybrid courts have gained attention as being one of the most important tools to cope with the prosecution of mass crimes and sensitive cases while helping weak domestic systems. The first hybrid court was established in 2000 and since then there have been several examples for such agreements.¹²⁶

The biggest advantage of hybrid courts is that they involve multiple actors while combining their benefits. The tri-hybrid model outlined by Roisin Burke aims to put forward a system that is built on the cooperation of the host state, the TCC and the UN. According to this model, the jurisdiction should be shared between the host state and the TCC - which is coherent with the argument of the Group of Legal Experts (GLE) that favored host state jurisdiction.¹²⁷ The new tribunal would have the possibility to exercise secondary jurisdiction, in case the TCC is either unable or unwilling to do so – such as in the case of the ICC. The agreement about this split would include the UN too, as it is the party responsible for the administration of peace operations. The binding treaty would be applicable within already existing agreements, such as the SoFA and the MoU.¹²⁸ The hybrid model aims to mix domestic and international legal experts and administrators. Considering the GLE report, the host state would have the priority in this regard too, as its personnel is the most likely to understand the domestic legal system, the language and the situation on the field.¹²⁹ However, in war likely situations, conflict affected countries often face systemic problems and the lack of expertise. Safe to say within inadequate laws and incompetent representation, services will be poor.¹³⁰ Besides this, TCCs and host states often lack the expertise to work with witnesses. When collecting evidence, experts have

¹²⁵ Office of the United Nations High Commissioner for Human Rights: Rule of Law Tools for Post Conflict States, Maximizing the legacy of hybrid courts, United Nations, New York and Geneva (2008), p. 5.

¹²⁶ United Nations and the Rule of Law: International and Hybrid Criminal Courts and Tribunals, available: <https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/international-hybrid-criminal-courts-tribunals/>, last seen: 2022.02.08.

¹²⁷ United Nations General Assembly Resolution A/60/980 (2006) art. 27.

¹²⁸ Sarah Roisin Burke: Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility under International Law, Leiden (2014) p. 246-248.

¹²⁹ United Nations General Assembly Resolution A/60/980 (2006) art. 33.

¹³⁰ Office of the United Nations High Commissioner for Human Rights: Ibid. p. 7.

to cooperate with victims, who have suffered significant traumas and facing taboos while coming out as witnesses. Fortunately, the UN could provide this help within the ad hoc tribunals.¹³¹

The concept of tri-hybrid tribunals seems to have many benefits to offer, however, in practice the implementation might face some difficulties. As it was mentioned, in the tri-hybrid model investigating and prosecuting military personnel is primarily but not exclusively the competence of the state. Involving another judicature might lead to tension and fear and as result TCCs might decline the number of troops and other types of personnel deployed to peace operations. So far, TCCs enjoyed the right to exclusive jurisdiction over their troops and there has never been any example for involving another judicial institution into the process.¹³² Hence, it is questionable whether this fear would retain TCCs from deploying troops. As discussed before, the biggest TCCs are mostly developing countries. Most of them are highly dependent on the funding that they receive from the UN based on the number of contributed troops. In the absence of experience, it cannot be said whether the reimbursement or the exclusive jurisdiction would be prioritized by TCCs.¹³³ From the UN's point of view, the possibility that they might lose troops poses serious risks as the organization already lacks – particularly female - resources in most of its operation.¹³⁴ However, if the UN has to ignore the misbehavior and misconduct of troops in order to be able to deploy them to further missions, then it is not just misconducts that are harmful but peace operations as well.

5.4. Case Study

As described in the previous sub-chapters, many issues prevent perpetrators from being prosecuted for the misconduct they committed. Through analyzing the following case study I aim to present these in practice.

Among others, the Code Blue's release draws attention to a case that is based on the series of misconduct committed in 2016 in Goma, the DRC. That time many allegations emerged against a Tanzanian battalion in MONUSCO, but this particular case was different. According to the information provided by the UN, the report involves the complaint of rape that was committed by a UN international civilian (non-military) staff member against a female child whose age

¹³¹ Carla Ferstman: Ibid. p. 4.

¹³² Sarah Roisin Buke: Ibid. p. 242.

¹³³ Ibid. p. 242-243.

¹³⁴ Nahlah Ayed: World peacekeeping efforts hampered by shortage of resources - and women, available: <https://www.peacewomen.org/resource/world-peacekeeping-efforts-hampered-shortage-resources-%E2%80%94-and-women>, last seen: 2022.02.11.

was not disclosed. The case was first reported by the mother of the victim to the local authorities of Goma in July, 2017 and to the UN early November, 2017. The UN also announced, that the allegation was assessed by the Head of the Mission, referred to the OIOS and the UN Headquarters while the minor started to receive support from UNICEF. The UN gave the information that the case is ‘pending’ but many further and exact details were rather blurry.¹³⁵ The assault raised urgent questions, regarding the nationality of the staff member, the (criminal) investigations and actions taken by UN entities regarding the rights of the victim.¹³⁶ For this reason, the co-directors of AIDS-Free World issued an open letter to the Secretary-General on November 22, 2017, asking numerous questions for further information regarding the case. As reply they received a letter from Under-Secretary-General for the United Nations Department for Field Support (DFS), offering general comments about the procedure and highlighted that the UN is “*not in position to provide answer to the specific questions*” about an “*ongoing investigation*”.¹³⁷ As Code Blue insisted on getting adequate, concrete answers, they consulted with legal experts about the integrity of the investigation and the prosecution, issued another 23 questions with references, and requested the UN to define and clarify its procedures on December 1, 2017.¹³⁸ After two weeks, they were still yet to receive response, so that they issued their third open letter to the SG outlining their concerns. In December 19, 2017, the UN replied to the legally-vetted questions with a collection of the relevant documents aiming to summarize the UNs approach and procedures¹³⁹, however, as Code Blue pointed out in its interim response in December 22, 2017, nine of the original questions have remained unanswered.¹⁴⁰ The feedback arrived within hours, stating that the Secretary-General addressed these issues in his general report to the GA and through the previous letters to Code Blue.¹⁴¹

¹³⁵ United Nations Meetings Coverage and Press Release: Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, available: <https://www.un.org/press/en/2017/db171121.doc.htm>, last seen: 2022.03.10.

¹³⁶ Code Blue: Latest UN Sex Assault Raises Urgent Questions, available: <http://www.codebluecampaign.com/press-releases/2017/11/22>, last seen: 2022.03.10.

¹³⁷ Letter to Co-Directors of Aids-Free World – Code Blue, available: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5a32bb1d71c10b7f5aa716e1/1513274189443/Letter+to+AIDS-Free+World+Co-Directors+from+Atul+Khare%2C+28+November+2017>

¹³⁸ Reply to Under-Secretary-General Atul Khare, available: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5a3d198a9140b78238a1e3a4/1513953675356/20171201%2C+Reply+to+USG+Khare.pdf>, downloaded: 2022.03.10.

¹³⁹ Letter to Co-Directors of Aids-Free World – Code Blue, available: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5a3d19100d9297f5765f2051/1513953552689/171219+Letter+to+Co-Directors+of+AIDS-free+World+-+Code+Blue.PDF>, downloaded: 2022.03.10.

¹⁴⁰ Reply to Under-Secretary-General Atul Khare, available: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5a3d1e48f9619a4e3148295d/1513954889083/171221+Code+Blue+Letter+to+Atul+Khare.pdf>, downloaded: 2022.03.10.

¹⁴¹ Letter to Co-Directors of Aids-Free World – Code Blue, available: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5a5fb211f9619a7cca963fab/1516220945926/171222+Letter+to+Co-Directors+of+AIDS-free+World+-+Code+Blue.pdf>, downloaded: 2022.03.10.

Later, the SGs annual report that was published in March 2018 noted that the case is pending as it is investigated by the OIOS and the alleged perpetrator is on leave without pay.¹⁴² However, the main problem with the internal investigation was the fact, that it was hidden from public view. In addition, the UN's account stated that they have found sufficient evidence to allege the crime, yet the case was referred to the OIOS, which has authority to conduct only disciplinary measures, as it is not a criminal system. The Code Blue made complaints that the UN handles allegations of SEA as simple disciplinary violations, while "*rape is far more than a disciplinary problem. It is a crime.*"¹⁴³ Furthermore, the nationality of the person was still not made public, which made it impossible for Blue Code to issue a letter to the State of nationality of the staff member. After a grueling 220 days of investigating, the OIOS determined that the allegation was substantiated – and further substantiated that there was a \$5000 settlement agreement between the official and the minor's parent¹⁴⁴ - in a letter, written in September 2019 described that the UN referred the credible allegation to the state of nationality of the accused UN official in order to actively cooperate with the national authorities, who indeed have the power for ensuring criminal accountability.¹⁴⁵ Later on, in a meeting with the UN's Investigations Division Ben Swanson, Code Blue has finally obtained information about the nationality of the perpetrator who was reportedly a British citizen. Mr. Swanson ensured that the procedure had been the following: *the DRC declined to press charges, the UN referred the case to the UK – whose laws enable extraterritorial jurisdiction – but behind closed doors, the UK opted out of pursuing justice for the child and her mother. The UN fired and fined its employee, and the British allowed an accused rapist to walk free.*"¹⁴⁶ Prosecutors stated there were too many inconsistencies in the case to reach the criminal standard of proof that is required in the UK. In the meantime, activists complained that the UK made no efforts to send detectives to the field and support the child who cried for help after getting raped.¹⁴⁷ The UN published

¹⁴² 2018 SG report on special measures [data annexes], available: https://www.un.org/preventing-sexual-exploitation-and-abuse/sites/www.un.org.preventing-sexual-exploitation-and-abuse/files/2018_sg_report_on_special_measures-data_annexes-final.pdf, p. 4, downloaded: 2022.03.11.

¹⁴³ Reply to Under-Secretary-General Atul Khare, available: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5aac23471ae6cfd37961ff12/1521230664217/2018-03-16%2C+Khare+letter+-+final.pdf>, downloaded: 2022.03.16.

¹⁴⁴ Jack Wright: British Nations official 'raped Congolese girl, 16, then paid her family £3,600 and escaped prosecution, available: <https://www.dailymail.co.uk/news/article-9447583/British-United-Nations-official-raped-Congolese-girl-16-escaped-prosecution.html>, last seen: 2022.03.16.

¹⁴⁵ Letter to Co-Directors of Aids-Free World – Code Blue, available: https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5efe379150bf501e8bfeec11/1593718674198/Lopez_Response_+Letter_MONUSCO.pdf, downloaded: 2022.03.16.

¹⁴⁶ Code Blue: The UN fined a Child Rapist. The UK Did Even Less, available: <http://www.codebluecampaign.com/press-releases/2021/2/12>, last seen: 2022.03.16.

¹⁴⁷ Jack Wright: Ibid.

data about the case on its Table of Allegations. According to this, the interim action – as administrative leave without pay – took place; the UN dismissed the accused person and referred the case for criminal accountability. Regarding the latter, there is still no data published about the nationality of the official.¹⁴⁸

*Chart 4: Information received on the allegation of the case study*¹⁴⁹

Date	Mission	Date of incident	Personnel	Nationality	Victim	Allegation	Paternity claim	Paternity Established	NIO appointed	Investigation (days)	Results	Interim Action	Final Action	Referral For Criminal Accountability
11/2017	MONUSCO	September / 2016 - Unspecified / 2017	Civilian (INT),1	N/A	Child (1)	SA (Rape)	No	N/A	N/A	UN OIOS (220)	Substantiated (Rape)	UN Administrative leave without pay	UN Dismissal	Yes

5.5. Summary

It has been truly substantiated by the subsections above that holding perpetrators accountable is indeed a swampy area. Possibilities outlined by international treaties regarding responsibility are still limited, while peacekeepers enjoy many privileges and immunities.

Member States might face many obstacles when trying to prosecute perpetrators. They often lack expertise who knows how to look for evidence, treat victims or witnesses and handle their fears and traumas. In addition, some of them even lack the sufficient legal background, as they have no power to extraterritorial jurisdiction. Frequently, even if they do, another key problem is their lack of will to prosecute their own personnel. In the latter regard, numerous solutions have been recommended, for instance the repatriation of units in case of a failed prosecution and the so-called naming and shaming practice.

The ICC's legal framework for sexual violence has proven to be the most progressive one so far. It is unfortunately not yet implemented into practice. It is proven, that the ICC might have a basis for jurisdiction regarding sexual violence crimes. However, it has two main obstacles in case of SEA. The ICC focuses only on international crimes, which does not include SEA and other misconduct. Also, the Court only prosecutes military and political leaders and not personnel working on the field. Even if SEA would fit into the category the ICC is based on complementarity, thus its jurisdiction goes hand in hand with long processes and delays. Furthermore, its – sometimes – intrusive monitorings are not welcomed and do not serve as a

¹⁴⁸ Conduct in UN Field Missions: Sexual Exploitation and Abuse – Allegations – MONUSCO, available: <https://conduct.unmissions.org/sea-data-introduction>, last seen: 2022.03.16.

¹⁴⁹ Conduct in UN Field Missions: Ibid.

right basis for motivating TCCs to report to the UN, even if they do have the necessary expertise to do so.

Hybrid courts have gained attention as important tools. The composition of the tri-hybrid court combines the advantageous aspects – such as effectiveness, timeliness, presence of expertise, host state participation - of the previous two models. However, implementing the idea most possibly would face obstacles and lead to further complications. As long as the concept is built on the criteria that the TCC shares its exclusive criminal jurisdiction, implementing it into practice is quite unlikely to happen.

The analyzed case study is unfortunately not extraordinary. There are many similar examples, facing the very same problems: lack of transparency, inadequate answers, everlasting investigations and a complete lack of will to bear responsibility for misconduct. Both the UN and the sending state were looking for excuses when facing direct questions and both refrained from taking effective measures to prosecute the alleged official. Even though an NGO issued numerous open letters regarding the most important details, still, even today the UN's website does not provide the publicity the most basic data or further informations regarding the redress received by the victim (if there is any at all).

6. CONCLUSION

As it was analyzed in Chapter 2, sexual crimes that take place in peacekeeping operations are not new phenomena. The first allegations were reported in the 1960's and even nowadays, there are many missions where misconduct appears to be widespread. There are four main types to be distinguished: Sexual and Gender Based Violence, Conflict Related Sexual Violence, Sexual Exploitation and Abuse and Sexual Harassment – going from the largest to the smallest sub-category. Different definitions must be used, as each cases have different causes, manifestation and consequences as well. It can be concluded that in the currently ongoing operations – particularly in MINUSCA and MONUSCO – CRSV and SEA are the most visible challenges. CRSV is mostly due to the fact, that most operations are deployed to war-affected areas which both state and non-state actors abuse to commit sexual crimes. While, on the other hand, SEA is the consequence of difference in power and depicted as crime of opportunity committed by mission personnel. It is indeed a great concern as it puts the local population under risk and jeopardizes the possibility to implement the mission's mandate.

Besides the above mentioned, there are many more reasons that render missions susceptible to SEA. Civil war circumstances often lead to collapsed state institutions, thus it is up to peacekeepers to protect civilians. Unfortunately, the fragile situation and the power imbalance tend to result in further violations. Many of the victims – who in most cases are children and women - are often homeless, living on the streets or in IDP camps, have no money and/or food. Peacekeepers tend to abuse these circumstances in order to obtain sexual favours and physical intrusion. The risk is further exaggerated for personnel who were deployed from TCCs, which also serves as host states for peace operations (e.g. the DRC). Personnel from such countries are even less likely to receive adequate vetting and training. In addition, despite the fact that there have been numerous initiatives, developing and third world countries still struggle to implement gender perspective into practice. The lack of female personnel - amongst both uniformed and civilians – is a common blemish, which is crucial to highlight as there have never been a single substantiated allegation against a female personnel. In addition, there are further concerns regarding the reporting, investigating and enforcement mechanisms of the UN and State Parties.

The Zeid Report and the Deschamps Report both aimed to highlight these systematic defaults and recommended a wide range of measures that might be helpful to enhance prevention, enforcement and remedial measures. Rules and standards had undergone check-ups, units and

other specialized entities were established, measures had been introduced and further negotiations have begun. However, despite the fact that implementation of some recommendations took place, the real change is still yet to come. The biggest problem is in fact the – lack of - response of Member States and the UN. First of all, TCCs who do have the power to hold deployed personnel accountable are either unable or – more frequently – unwilling to do so. They often lack sufficient legal background, expertise and most importantly the willingness. The latter is also correct when it is about the UN. The Organization does not necessarily provide real commitment to find the solution. They run everlasting investigations, give inadequate answers and pay more attention on upholding their good reputation in the media than on being transparent. As simple as it takes, it is just none of their interest to prosecute their own nationals or personnel for a crime that happened in a foreign, underdeveloped country and casts a bad light upon them.

Marie Deschamps' 2017 comment is also relevant over a 4-years perspective. Although the fight against SEA is narrated as a priority for the international community, still, very little is being done in practice. Combining these with the fact, that neither international law provides a clear-cut solution for the question of responsibility, properly substantiates the fact that a brand new approach is required on the matter. The UN took many credible actions and peacekeeping is indeed one of its most important tools, which could not exist without the continuous support of its Member States. However, as long as there is misconduct committed on the field, there is still more work to be done.

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8. LIST OF FIGURES

Chart 1: Differentiation of sexual offenses (GBSV, CRSV, SEA and sexual harassment), own editing based on the data of the source

Chart 2: Number of allegations reported in MONUSCO

Chart 3: Number of allegations reported in MINUSCA

Chart 4: Information received on the allegation of the case study

9. APPENDICES