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SEXUAL ABUSE AND EXPLOITATION IN UN PEACEKEEPING OPERATIONS: INCREASING ACCOUNTABILITY, PROVIDING A REMEDY

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Dedication

This thesis is dedicated to my family who supported me through my unpredictable life and studies; and to my friends, especially Pietro, Tiaan, Christina, and Hugo, who patiently listened to my monologues and coped with my stress during these months.

I also would like to dedicate this thesis to Ms. Michaela Anghel, whose support, knowledge, and expertise in extrapolating what I truly meant to say, made this thesis more bearable to write; and Ms. Isabel Düsterhöft whose enthusiasm in teaching made me become passionate about International Law and choose this approach to the thesis.

I. EXECUTIVE SUMMARY

The main purpose of this dissertation is to provide a solution to the extensive lack of accountability and of effective remedies to the victims of Sexual Exploitation and Abuse at the hands of UN Peacekeepers. In order obtain this, existing literature was reviewed to understand the Department of Peacekeeping Operations' legal framework and establish a pattern of existing remedies in this context. The latter was harder to investigate because academic literature is limited to exploratory research and few solutions are provided. Qualitative research methods were employed in the form of semi-structured and open-ended interviews with representatives from the juridical, academic, and non-governmental sphere. Through these two main methods, several conclusions were drawn. This dissertation argues that the international community shall recognise Sexual Exploitation and Abuse as a crime of a private law character under the UN Charter. This recognition could ultimately lead the Peacekeepers to not be granted functional immunity for SEA-type crimes, and the UN to waive its organisational immunity and provide an administrative remedy to the victims. To achieve judicial accountability and to eliminate the UN's conflict of interests, an independent system of special courts should be established. Lastly, given its employer liability, the UN should establish a systematic compensation mechanism to be funded by the DPKO. Recommendations include further research on protection mechanisms for UN whistle-blowers and closer investigation to the needs and wishes of the victims of SEA.

This investigation is deemed important because the United Nations, and consequently its Peacekeepers, cannot continue to operate under *de facto* impunity when almost the entirety of their victims is left without any redress, especially in the face of gross abuses of universally recognised Human Rights.

Keywords: Accountability, Effective Remedy, Immunity, Peacekeeping, Sexual Abuse, Sexual Exploitation.

II. LIST OF ABBREVIATIONS

CAH: Crimes Against Humanity

CDU: Conduct and Discipline Unit

DRC: Democratic Republic of Congo

ICC: International Criminal Court

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for the former Yugoslavia

IHL: International Humanitarian Law

MONUC/MONUSCO: United Nations Mission in the Democratic Republic of Congo

MOU: Memorandum of Understanding

NGO: Non-Governmental Organisation

OIOS: United Nations Office for Internal Oversight

SEA: Sexual Exploitation and Abuse

SGB: Secretary-General's Bulletin on Special Measures of Protection

SOFA: Status of Forces Agreement

SRSG: Special Representative on the U.N. Secretary-General

TCCs: Troop-Contributing Countries

UN GA: United Nations General Assembly

UN PKOs: United Nations Peacekeeping Operations

UN DPKO: Department for Peacekeeping Operations

UNICEF: United Nations Children's Fund

UN SC: United Nations Security Council

UN SG: United Nations Secretary-General

UN: United Nations

UNEF: United Nations Emergency Force

UNHCR: United Nations High Commissioner for Refugees

ZTP: Zero Tolerance Policy

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1. INTRODUCTION

The issue of UN Peacekeepers unaccountability for crimes committed during their deployment has become relevant in the last two decades as UN Peacekeepers have been repeatedly accused of, among other crimes, Sexual Exploitation and Abuse of the local populations they are in charge of protecting. In an address to the United Nations General Assembly in May 2014, Jane Holl Lute, Special Coordinator on improving the UN response to Sexual Exploitation and Abuse (SEAs), urged the UN to "stop admiring the problem, and begin to pursue vigorously solutions to this issue" (Edwards, 2016). However, while speeches like this one are not uncommon within the UN, more and more UN Peacekeeping Missions are uncovering countless reports and allegations of abuse and rape by the Blue Helmets. This multi-faceted problem has been tackled by the UN over the years without clear and tangible results.

Part of the motivation for the lack of results can be found in the checkered UN record of SEAs. In fact, while Peacekeepers' involvement in widespread sexual misconduct emerged before 2000, the UN did not take action until 2003 (Karim & Beardsley, 2016, p. 6). The first allegations emerged in the UN Mission to Cambodia in 1993 and were followed by others from Bosnia and Herzegovina, Haiti, the Democratic Republic of Congo (DRC), East Timor, Liberia, and Sierra Leone (Human Rights Watch, 2016). Only a decade after, on October 15, 2003, the then Secretary General Kofi Annan, issued a Bulletin on a Zero-Tolerance policy which aimed to forbid the exchange of monetary or material goods for sex by UN Peacekeepers (UN Secretariat, 2003). The Bulletin provided for the definition of Sexual Abuse and Sexual Exploitation. Sexual Abuse was defined as "the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions" (UN Secretariat, 2003, Sec. 1); Sexual Exploitation as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another" (UN Secretariat, 2003, Sec. 1). Although this Bulletin offered a diplomatic resolution, the implementation of such rules was still lacking. In fact, it was not until in 2005 when the Department of Peacekeeping Operations announced a new form of training, implementation and investigation system through the Conduct and Discipline Team ((Karim & Beardsley, 2016). In 2007, the Zero Tolerance Policy was extended to all UN personnel including civilian and police. Notwithstanding the action that has been taken, these changes meant that the UN did not collect data on SEA allegations until well over a decade from the first incidents (Karim & Beardsley, 2016, p. 6).

The issue of SEA-type crimes in Peacekeeping Operations is hard to tackle. The first reason presented by this dissertation is the difficulty of holding Peacekeepers to accountability. On this issue, the thesis focuses highly on civilian personnel, however, the reasoning can be applied almost in full to military Peacekeepers as well. The lack of judicial accountability derives from the existence

of functional immunity for all UN personnel. The lack of administrative accountability – or provision of effective remedies by the UN – is due to the Organisation's enjoyment of the so-called organisational immunity and its principle of speciality. This dissertation will argue in favour of the inapplicability of functional immunity for SEA-type crimes. It will further suggest that organisational immunity shall apply only if alternative remedies are produced.

The goal of the present work is to better understand how accountability for the perpetrators can be increased and what remedies should be made available to the victims. This is an important question to answer because it is a sad irony that the Human Rights entrenched in the Universal Declaration of Human Rights are abused precisely by those deployed to protect them. But also because the United Nations, and consequently the Peacekeepers, can no longer continue to hide behind official statements in favour of accountability and then claiming their immunity when the time to take responsibility comes.

Unfortunately, the overall lack of academic research contrasted by a large number of news reportages speaks volumes about the taboo that this topic is. Through the literature review, it will be clearer that scholars have written on the concept of SEA in PKOs, but only a limited number have dealt with the issue of immunities, judicial accountability, and provision of remedies.

This dissertation is divided into sub-questions which will be answered throughout the Chapters. The first sub-question that will be answered acquaints the reader with the Peacekeeping Operations, their functions, and the development of the DPKO Legal Framework in relation Sexual Exploitation and Abuse. The literature review will attempt to provide a synopsis of the history of Sexual Exploitation and Abuse in the Operations and will provide further insight into the immunity system for military, police, and civilian personnel and the UN itself, as well as the provisions for accountability. Furthermore, this Chapter will bring to the fore the current debate of effective remedy. Lastly, the academic work on the addition of women in PKOs will be discussed to account for the largest debate in Peacekeeping literature. The next Chapter will instead be essential to the achievement of the final result. Indeed, it will first answer the question of how to prevent immunities from obstructing justice and, secondly, it will provide two solutions to the research question. The first will tackle the research question on how to increase the judicial accountability for the perpetrators and providing an effective remedy through an independent System of Special Courts. The second will tackle the issue of UN administrative accountability by calling for a UN compensation mechanism for the victims of SEA.

This dissertation, ultimately, aims at attributing to the United Nations the liability of employer which must grant an administrative remedy, to the Peacekeepers accused of SEA the due accountability to their actions, and to the victims of SEAs the fulfilled right to judicial and/or alternative remedy.

2. METHODOLOGY

This Chapter aims at providing the reader with a clear understanding of the methods used during the research and writing phases. First, the principal approach to qualitative research is highlighted. Then the two approaches to qualitative research are argued. In the first instance, the use qualitative desk research is deemed to be the most feasible approach for the requirements of the dissertation. In the second instance, the use of qualitative interviews is outlined and a sub-Section on the transcription of said interviews is described. Afterwards, quantitative research is briefly discussed and an explanation for its relatively low usage is given. Furthermore, a Section on research ethics was deemed indispensable due to the high level of controversies surrounding this topic and to lay out the ethical approach taken to conduct the research. Lastly, the research limitations are outlined to provide the reader with some answers to the gaps he or she may find throughout the dissertation.

2.1 QUALITATIVE RESEARCH

Creswell defines qualitative research as the "research [of a] problem that can best be understood by exploring a concept or phenomenon" (Creswell, 2014, p. 152). Indeed, this dissertation deemed qualitative research to be its principal approach to the explorative type of investigation. This decision was taken for three principal reasons. Firstly, as will be mentioned in the Section on limitations, the time and framework in which this thesis was required to be completed, did not allow for a quantitative approach to field research. Secondly, qualitative desk research was deemed to be the most effective and feasible tool for a Bachelor's dissertation on this topic. Lastly, this type of research was used for the conducted interviews as well and the reasoning behind this choice will be explained later in this Section.

2.1.1 Qualitative Desk Research

During the research process, this dissertation deemed desk research to be the most feasible method to collect secondary data – or sources deriving from previous studies, research, and, generally, the scholarly world (Brow University Library, n.d.). As suggested by Creswell (2014), the process consisted of gathering academic work on the different topics reviewed by the thesis. The use of books has been recurrent especially in the establishment of the two historical frameworks, namely the development and changes of Peacekeeping Operations, and the chronological history of SEAs in PKOs. Contrastingly, academic literature from peer-reviewed journals was the basis for the analytical part of the literature review and allowed for a more comprehensive structure of the results. These articles were gathered through The Hague University Online Library Database, Sciences Po Lille Online Library Database, and the University of Turin database. To research the United Nations' legal framework and the Organisations' stance on SEAs, the dissertation deemed the Department of

Peacekeeping Operations' website the most reliable source together with the UN General Assembly Resolutions and a few Resolutions of the UN Security Council.

2.1.2 Qualitative Interviews

While qualitative desk research was indispensable in providing background for this dissertation and in answering its sub-questions, qualitative interviews were essential to developing the answer to the main research question. The interviews were also selected as the most feasible source of primary data. While academic research did provide information on the UN's legal framework and some effective remedies implemented in the past, it mostly focused on solutions such as the addition of women to PKOs which were less germane to the research questions. The interviews, however, provided great insight on the implications of the UN organisational immunity and Peacekeepers' functional immunity, and moreover, a feasible solution to the UN's judicial impotence.

The format used for the two interviews conducted was semi-structured and open-ended questions. Creswell (2014) defines semi-structured interviews as a short series of central queries which allow the interviewee to expand on the issue and provide in-depth insight. The advantages of this type of interviews were seen in the conveying of historical insight, personal experience, and extra analysis of the topic. The disadvantages concerned the occasional imprecision in the details – i.e. imprecision in the quotation of a case – and the filtering of the answers through the interviewees' views. The latter, however, was not truly an issue to the purpose of this dissertation, as it confirmed the sentiment of reticence observed in the academic articles. The researcher found it easier to focus the interview through the use of several follow-up questions. Another helpful tool was the conduct of interviews vis-à-vis which conveyed the sentiment of the answers more convincingly and clearly.

The interviewees were selected for their experience and expertise in the field of Peacekeeping and/or Sexual Exploitation and Abuse in the Peacekeeping context. Specifically, the dissertation aimed at obtaining interviews from the academic world, the international judicial branch, the non-governmental sphere, victims support structures, and United Nations or DPKO's officials. The first three spheres were indeed consulted through the interview of Professor Andrea Spagnolo, who accounted for the first two, and Professor Kaila Mintz as part of the non-governmental sphere. Unfortunately, the two latter spheres were not consulted and an evaluation of the reasons will be presented in the Limitations Section. All interviewees were contacted through email and given a list of potential questions. All contacted individuals were given the choice between conducting the interview via Skype or on paper, but all chose Skype as their preferred method.

2.1.2.1 Transcription of the Interviews

The two interviewees represented the academic world, the international judicial branch, and the non-governmental sphere.

The first was conducted with Professor Andrea Spagnolo, Research Fellow of International Law in the Law Department of the University of Turin and a Consultant at the United Nations Interregional Crime and Justice Research Institute. As an expert of the judiciary branch, the topics of immunities and jurisdiction of international tribunals and domestic courts were the main focus of the interview.

The second interview was conducted with Professor Kaila Mintz, Coordinator of the Code Blue Campaign at the AIDS-Free World NGO. Her project was selected by this dissertation as a feasible and UN-approved solution to the lack of accountability for Peacekeepers. Further insight was given by the Professor on the concept of functional immunity and effective remedy on which the organisation has also focused.

In order to transcribe the interviews, and interpret them correctly, this dissertation relied on the theory of McLellan, MacQueen and Niedig (2003). According to the authors there exists no right pattern to transcribe a personal communication or interview (McLellan, MacQueen, & Neidig, 2003). Indeed, they argue that diverse types of data collection and scope of the research call for different ways to report the interviews and, even then, the ultimate choice lies with the researcher.

Two main choices were faced during the transcription of the interviews. The first concerned the choice between the use of the transcription or of the notes in the reference of the interview throughout the dissertation. The second choice regarded what McLellan, MacQueen and Neidig describe as "what to keep and what to leave out" (McLellan, MacQueen, & Neidig, 2003, p. 66). The former choice relied on the use of the full transcription. Indeed, by relying solely on the notes taken during the interviews, the dissertation's outcome would have been distorted. Instead, by using the full transcription as a source, the dissertation presented the interviewees' statements as accurately as possible if not directly quoted. The latter choice was taken in favour of the so called *denaturalised transcription* (Oliver, Serovich, & Mason, 2005). This type of transcription is generally used in dissertations of the likes of this one where the main focus is on the essence of the interview as it allowed the researcher to avoid the transcription of elements typical of the verbal communication such as involuntary vocalisation.

2.2 QUANTITATIVE RESEARCH

According to Creswell, quantitative research is the "approach for testing objective theories by examining the relationship among variables" (Creswell, 2014, p. 32). This dissertation did not make use of quantitative research to collect primary data. To fulfil the scope of the research, quantitative data could only benefit the research sub-questions that concerned the numbers of SEAs committed in PKOs and, perhaps, the statistics on gender mainstreaming and judicial accountability for the Peacekeepers. The reason behind the decision to avoid this research method lies in the extensive documentation from the United Nations on the reported cases of SEAs, as well as on gender

mainstreaming and judicial accountability statistics. The researcher, however, recognised the lack of quantitative resources especially in the statistics on SEAs. It is, therefore, a recommendation of this dissertation that a concerted effort of the governmental and non-governmental sphere, and of the UN be developed to provide more reliable data on the cases of SEAs.

2.3 RESEARCH ETHICS

The topic of this dissertation is notably of high ethical tension. Indeed, the United Nations itself has been struggling for years in the compromise of SEA definitions, let alone solutions and their implementation. Therefore, the conduct of the research had to be planned carefully to avoid evoking further tensions.

The original idea of the research was aimed at a fully victim-centred approach which would have been innovative in this field of academia. Consequently, the dissertation planned to make use of interviews with survivors of SEAs, their attorneys – if present, and local NGOs that deal daily with these issues. However, the short time, the lack of means, and especially the ethics question led the researcher to avoid this approach, and focus more on a still innovative solution yet with higher risk-avoidance.

Nevertheless, the two interviews were conducted following a strict ethics protocol which included several documents to be signed preliminarily to the interview. Firstly, these documents included an Informed Consent form to be signed beforehand in which the scope and the approach of the research were explained. The form further provided the possibility for the interviewee of not being recorded or maintain the anonymity. Secondly, the interviewees were provided with potential questions in advance.

The credibility and reliability of the desk-research sources were also thoroughly checked to confirm their accuracy and validity.

2.4 RESEARCH LIMITATIONS

The limitations to a research are the "characteristics of design or methodology that impacted or influenced the interpretation of the findings from [the] research" (Price & Murnan, 2004, p. 66). This dissertation faced some limitations due to several reasons outlined hereunder.

The dissertation relied heavily on secondary data. The risks taken in making this choice was that the sources were only as good as the researcher who produced them. Conclusively, primary data would have been the ideal choice; however, due to constraints in time and feasibility, secondary data was deemed the best option.

A further limitation was the relatively limited amount of academic research on Peacekeeping Sexual Exploitation and Abuse. Furthermore, the main research question dealt specifically with practical measures to increase accountability for the perpetrators and providing an effective remedy to the victims. The dissertation presents no more than a dozen sources which have dealt in general with the question and no more than four with in-depth analysis. This lack of research affected the answer to the main research question inasmuch that it ended up being an educated guess. Although this is not new in academia, the risk of being incorrect or imprecise grew.

A third limitation was the resistance or lack of response to interview requests. Of the seven people contacted in the previously mentioned fields, only three answered. Two of them, Professor Spagnolo and Professor Mintz, were eventually interviewed. The third scholar, unfortunately, did not work closely with the topic any longer and did not give availability for the interview. This lack of response left important parts of the victims support structures field and the UN or DPKO's perspective uncovered.

Other limitations, although in smaller measure, accounted for the lack of non-English literature on the topic of accountability and effective remedies, the limited timeframe allowed for this dissertation, and the unfeasibility of collecting primary data by conducting field research in the UN Peacekeeping Missions also due to the broad geographical sphere.

3. WHO ARE THE PEACEKEEPERS?

The aim of this Chapter is to provide the reader with a comprehensive overview of the UN Peacekeeping system, its history and composition, the training Peacekeepers receive, their rights and duties, and the immunities they enjoy. Peacekeeping activities were designed to contain, moderate and/or put an end to hostility between nations or factions within the same nation. These Operations, organised and directed by an international body, are conducted through the intervention of an impartial foreign organisation, namely the United Nations. They provide for the use of military and civilian Forces in order to integrate the political process and to restore and maintain peace (Stato Maggiore della Difesa, 1992, p. 7-8)

The first *Peacekeeping Operations* established by the UN, which included the UN Truce Supervision Organisation (UNTSO), were intended for investigation activities, thus being attributable to the conciliatory action of the United Nations (UN Charter, Art. 34). It consisted of sending missions of military observers called to verify the commitments made by the parties to an international conflict following the declaration of ceasefire (Casolari, 2009).

It was in 1956, with the establishment by the General Assembly of the *United Nations Emergency Force* (UNEF), that the United Nations Peacekeeping Operations had, for the first time, the task of *maintaining*, as well as monitoring, the cessation of hostilities between the warring parties (Casolari, 2009). The UNEF thus represented the first Force of the UN *stricto sensu*. In many respects, it was also a reference point for the identification of the legal framework applicable to Peacekeeping nowadays. In fact, many of the principles which have inspired the work of Peacekeepers were then resumed, albeit with the necessary adjustments, in the definition of the nature, composition, and mandate of the subsequent Operations (Ronzitti, 1999).

First, the Operation was characterised by the *temporary nature* of the mandate. It presented a clear *international nature* and was, therefore, regarded as *impartial to the parties of the conflict*. This was also reflected in its command and control system: despite being constituted by contingents made available by individual States, the Operation was *independent of any national policies*. It was depending on the orders given directly - through the Force Commander - from the General Assembly and the Secretary-General of the United Nations (UN SG) (United Nations Emergency Force, n.d.). Another aspect was that the UNEF could not give rise to enforcement action, in practice, the *use of force* was permitted only in *self-defence* (United Nations Emergency Force, n.d.). Finally, its deployment was based on the *principle of consent*. By consent, the UN meant the approval of the territorial sovereign who had allowed the Force to operate on its territory but also that of UN member states or Troop Contributing Countries (TCCs), which had provided voluntarily, at the request of the UN SG, military contingents and equipment (UN Charter, Art. 43, para. 2).

The years following the Cold War were characterised by a more substantial number of Operations. For the first time, these Operations saw the entering into the legal framework of the peace agreements signed by the conflicting parties, the results of which were the mediation of third States and conciliatory activity of the United Nations – so-called *peacemaking* (Ronzitti, 1999). Hence the so-called *multifunctional* Peacekeeping Operations, also known as second-generation Peacekeeping Operations were born (Casolari, 2009). The characteristic feature of these Operations, composed of both civilian personnel and military Forces, was that in addition to the traditional military Peacekeeping, they were entrusted with additional functions, ranging from humanitarian activities (e.g. the repatriation of refugees or assistance of populations) to activities which interacted directly with the exercise of sovereign territorial powers. The latter included functions of control and training of the local police and those related to the monitoring of democratic elections, restoration of the rule of law, and the institutional, economic and social reconstruction of the countries involved in the conflict (Cellamare, 1999). These Missions were the blueprint of today's Peacekeeping Operations.

Today, the UN Peacekeeping Forces are formed by a heterogeneous group of people divided mainly into three Sections: military, police and civilian personnel. The classification proposed here does not claim to be exhaustive but only facilitates the identification and analysis of tasks assigned to Peacekeepers, by schematising those indicated by the mandates approved by the UN Security Council. According to the last UN Peacekeeping Fact Sheet (Department of Peacekeeping Operations, 2016), in the current 16 Peacekeeping Operations the personnel from 123 different nationalities, was divided as follows:

- Military: 87,134
- Police: 12,885
- Civilian personnel: 18,030.

Civilian personnel can be locally or internationally recruited and is divided into officials, assistants and volunteers – which are more than 1,500 as of August 2016 (Department of Peacekeeping Operations, 2016). Military personnel, on the other hand, is composed of military Forces selected and recommended to the UN by the respective TCCs (UN Charter, Art. 43, para. 1) and comprises Military Observers, Peacekeeping Forces Battalions, United Nations Police and Formed Police Units (Tschiband, 2009). All of these groups enjoy privileges and immunities that will be discussed in the following Chapters. For now, it suffices to say that they all must abide by the UN core values of integrity, professionalism and respect of diversity (UN Office of Human Resources Management, n.d., p. 3-4). Furthermore, several codes of conduct have been put in place over the years to facilitate and bind the actions of Peacekeepers. Military personnel are bound by all the codes put in place by the UN and are also trained following a list of *Do's and Don'ts* which provide for the understanding

of the moral obligations attached to the Mission. Although civilian personnel do not receive the same training as the military, their moral responsibilities are the same and are laid out in the respective staff rules (Tschiband, 2009).

Since 2002, the tasks assigned to Peacekeepers correspond to four functions:

1. *Military Function*: its purpose is to create and ensure the maintenance of the minimum conditions of peace (here understood as absence of war and armed conflict) and of physical, individual and collective security, necessary to prevent the resumption of hostilities and promote a return to normalcy;
2. *Political Function:* it aims to favour the consolidation of peace through the construction and/or reconstruction of governmental structures that are functioning, democratic and legitimised by the entire national population;
3. *Humanitarian Function*: its purpose is to alleviate the suffering of the civilian population, intended as a first step in the wider process to the full recognition of human dignity;
4. *Social Function:* its purpose is to reconstruct the socio-relational structures of the country in order to encourage the return to peaceful coexistence (Sola, 2002).

Through the exercise of these four functions, the international community intervenes in crisis areas taking simultaneously two different strategies which Sola (2002) divides into macro and micro strategy. The first type is a *macro strategy* because it is directed towards the State and in particular the guarantee of its existence against internal threats (military function) and the reconstruction of its operating structures - legal system, legislative system, administration and justice, culture and values of reference - (political function) (Sola, 2002). The second is a *micro strategy* because it is directed towards the civilian population in order to meet the needs of physical, psychological and social safety of individuals and minority groups (humanitarian function) and to build mutual trust between the conflicting factions among themselves and with the State authorities (social function) (Sola, 2002).

The above-mentioned classification, however, does not imply a clear distinction between the tasks performed by the military component of the Mission (troops and military observers) and those carried out by the civil component (civilian police, civilian observers, members of UN agencies and NGOs). The military contingents, by their mandate, can also deal directly with purely civilian tasks such as humanitarian and electoral assistance. This decision is often "forced" by the multifunctional character of the Operations. This character is created progressively with the achievement of the conditions of safety in the field and consensus of the parties that makes the exercise of broader functions possible. In these cases, it is the UNSC that expands the mandate of the PKO (Cellamare, 1999).

Hereunder, the graph will summarise the abovementioned tasks for a clearer understanding.

FUNCTION	*ACTIVITY*	*TASK*
Military	Monitoring	• Interposition between the warring parties; • Insuring the maintenance of territorial integrity of the host state; • Verifying the compliance with peace accords/ceasefires + report to the SRSG; • Creation and patrolling of safe areas; • Offer of good offices and/or mediation.
	Disarmament	• Collection, storage, transfer and/or destruction of the heavy and light weapons present on site; • Verification of the disarmament of armed groups; • Monitoring of compliance with embargoes on arms and military equipment.
	Demining	• Mine clearance, mine mapping + creation of a database; • Conduct of information and trainings on local mines clearance.
	Demobilisation / Reintegration	• Monitoring the withdrawal and/or deployment of military formations + Assistance to their (re)organisation and training; • Counting and registration of combatants.
Politics	Civil Administration	• Organisation of elections + Monitoring of the election campaign, conduct of elections, ballots, and recording of results; • Interim administration of the territory.
Humanitarian	Humanitarian Assistance	• Support to relevant State Authorities, governmental and non-governmental humanitarian agencies; • Protection of personnel for humanitarian operations, UN infrastructure, humanitarian convoys and camps; • Distribution or facilitation to the distribution of humanitarian aid; • Emergency health assistance to civilian populations and military contingents, whether regular or irregular;

		• Collection, identification and assistance to the return of displaced persons and refugees + Organisation of refugee camps; • Repair and maintenance of infrastructure (roads, bridges, etc.) for humanitarian purposes.
Social	Human Rights	• Monitoring and education of the respect for Human Rights; • Reporting of violations and abuses; • Protection of places of worship and cultural heritage.
	Police Activity	• Monitoring of police in the maintenance of Law and Order; • Rebuilding of trust in State Authorities; • Facilitation of the resumption of daily activities of the local population; • Monitoring and/or support of the process of peaceful transition towards independence or under another authority.

3.1 UN PEACEKEEPING LEGAL FRAMEWORK

To understand the responsibilities and duties of UN Peacekeepers in fighting SEAs and the UN position on the issue, it is essential to know the legal framework that binds the Operations. Over the years the UN has put in place several Codes of Conduct to protect and regulate Peacekeepers' activities in Mission. The principal Codes are the Ten Rules of Personal Conduct for Blue Helmets, the Code of Conduct for Law Enforcement Officials, and the UNHCR Corporate Code of Conduct. It was only in 2003 that provisions on SEAs were added to these Codes.

Olivera Simic (2012) divided the progress of the DPKO's legal framework on SEAs into three phases, namely (i) *ad hoc* Mission-level responses to allegations of Sexual exploitation, (ii) UN coordinated responses within the UN system, and (iii) the adoption of the Zero Tolerance Policy. This dissertation excludes the study of the first phase, which will not provide any relevant information to the thesis' focus, and concentrates on the second two following the structure provided by Simic.

3.1.1 1997-2002: UN coordinated responses to rise in SEAs

Simic (2012) argues that, due to the ineffectiveness of the previously tried *ad hoc* responses, the UN DPKO was pressured into advancing and improving their strategy to eradicate SEAs in PKOs. It is important to bear in mind that most of the actions were taken in the prevention of SEAs at the hand of uniformed Peacekeepers, leaving civilian and police Peacekeepers not covered by stricter provisions.

In 1997, one of the aforementioned Codes was put in place, namely the *Ten Rules: Code of Personal Conduct for Blue Helmets* (hereby "Ten Rules"). This Code consisted in a pocket booklet laying down the standards of behaviour that every uniformed man or woman should uphold (Department of Peacekeeping Operations, 1997) and for the first time, in paragraph 4, the following provision was outlined: "Do not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children" (Department of Peacekeeping Operations, 1997, para. 4). However, one of the main criticisms at the time was that no official definition of Sexual Exploitation or Abuse was provided (Simic, 2012), leaving the interpretation of the paragraph open to personal understanding. Furthermore, these documents were classified as guidelines and, despite the expectations of adoption by TCCs, they were non-binding. It was only nine years later, in 2005, that Prince Zeid of Jordan proposed the inclusion of the guidelines in the memoranda of understanding between the UN and TCCs, thus rendering them legally binding (UN General Assembly, 2005). Another important aspect to consider when discussing the DPKO shortcomings and late response is that in 1996, Grac'a Machel, in the so-called *Machel Report*, had already pointed out the culture of silence that surrounded PKOs. She especially made reference to the Senior Officers who often turned a blind eye to their subordinates who committed sexual crimes and to the lack of accountability for that behaviour (UN General Assembly, 1996, p. 31). In the same report, she proposed preventive measures that could be adopted to "avoid creating opportunities for gender-based aggression against women and children" and also the inclusion of psychological and reproductive health programs in all UN humanitarian efforts (UN General Assembly, 1996, p. 32). In her recommendations she pushed for important actions such as, but not limited to, proper training on SEAs – which will be put in place only in 2002/2003 – efficient reporting systems, the treatment of rape as a war crime – which at the time was being discussed in the ICTY and ICTR – gender-mainstreaming in administrative and investigative positions, and support systems for victims of SEAs (UN General Assembly, 1996, p. 32).

In August 1999, the UN SG Kofi Annan in his Bulletin addressed the mandatory observance of IHL by UN Forces (Murphy, 2006). The Bulletin stated that "the fundamental principles and rules of international humanitarian law set out in the present Bulletin [were] applicable to UN Forces when in situations of armed conflict, they [were] actively engaged therein as combatants, to the extent and

for the duration of their engagement" (UN Secretariat, 1999, Art. 1.1). Murphy (2006) outlined that this Bulletin bounded the UN and its personnel to the acquaintance and respect of international humanitarian laws and norms with or without the presence of a SOFA, though it did not provide any insight on the liability that the personnel might be subject to in case of breaches of its duty. Moreover, Murphy (2006) explained that through Section 4 of this Bulletin the UN relieved itself from prosecuting military personnel for violations of IHL and/or creating special tribunals.

In October 2000, the UNSC passed Resolution 1325. This important document laid out some key aspects of the connections existing between women and war. Following the example of the Machel Report, UNSC Resolution 1325 called for the implementation of Human Rights law to protect women for the duration and the aftermath of conflict, to "mainstream a gender perspective into Peacekeeping Operations, and to implement special training on International Humanitarian Law and women's rights and needs during conflict" (UN Security Council, 2000, p. 2). Furthermore, Res. 1325 recognised the need to collect data on the impact of armed conflict on women and girls (UN Security Council, 2000). Detraz (2012) argued, however, that the Resolution used a language that highlighted the needs and rights of women and children, while it did not cover the roles of men, let alone Peacekeeping Forces. Shepherd (2000) similarly emphasised that adding women to the picture without addressing gender issues in depth, did not solve the problem and could be counterproductive. An advancement in combating sexual violence in conflict will be seen with UNSC Resolution 1820, in 2008, where one Section was specifically targeted at sexual violence in a post-conflict situation and by military contingents of PKOs (Detraz, 2012). Since 2000, five other resolutions concerning women and warfare have been passed, namely UNSC Res. 1888, UNSC Res. 1889, UNSC Res. 1960, UNSC Res. 2106, and UNSC Res. 2122 (Karim & Beardsley, 2016).

In October 2001, the first training module involving the topic of SEAs was issued by the DPKO and titled *Gender and Peacekeeping, In-Mission Training.* The core of the training was the understanding of gender relations and was specifically targeted at military and civilian police (Department of Peacekeeping Operations, 2001). This training module mentioned also prostitution in the Section *Gender and Human Rights*; however, the term was only used once in the statement that "women may turn to prostitution to have money to feed their children due to the impact of the conflict on livelihoods and the need to survive" (Department of Peacekeeping Operations, 2001, p. 20). It did not provide any reference to the UN stance on prostitution or any relationship between Peacekeepers and local women. This reference was provided in 2002 in the second training module.

The training module issued in 2002 was titled *Training Module on Gender and Peacekeeping* and was structured in a Question & Answer fashion (Department of Peacekeeping Operations, 2002). A fundamental question for the Peacekeepers concerned the permission to engage in sexual activities while on Mission, to which the answer was that Peacekeepers are "under obligation to uphold

international Human Rights standards" (Department of Peacekeeping Operations, 2002, p. 13). Simic (2012) interpreted this answer to suggest that, yes, Peacekeepers may engage in sexual activities but avoid exploitation. Prostitution was mentioned once more as the document stated that under no circumstances should the Peacekeepers abuse their powers "by using prostitutes and thus encouraging prostitution" (Department of Peacekeeping Operations, 2002, p. 13). This shift in the DPKO's position on prostitution was interesting in light of the increasing awareness of the *Peacekeeping Economy* phenomenon which so often involved girls as young as 13 to be forced into prostitution (Detraz, 2012). With this stance, the DPKO outlawed, on paper, any condoning of both voluntary and forced prostitution.

3.1.2 2003: The Zero Tolerance Policy

In 2002 the DPKO was faced with the reality of SEAs in much larger scale than they predicted when the UNHCR and Save the Children UK issued the *Sexual Violence and Exploitation* Report. The report dealt with cases of *survival sex* between local children and Peacekeepers – prevalently humanitarian workers, in exchange for food and medical aid (UNHCR and Save the Children UK, 2002). The allegations were investigated by the UN Office of Internal Oversight Service (OIOS), but their report resulted inconclusive (UN General Assembly, 2002). Nevertheless, this opened a discussion on the problematic nature of SEA and led the Inter-Agency Standing Committee to establish a special Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises. The most important results that came from the Task Forces' recommendations were finally the definition of sexual abuse and sexual exploitation – mentioned in the introduction, and the outlining of six core principles[1] on sexual behaviour to be added to every UN Code of Conduct – which will also be included in the fourth Section of the SGB in 2003 (Simic, Regulation of Sexual Conduct in UN Peacekeeping Operations, 2012).

[1] The Six Core Principles are:

1) Sexual Exploitation and abuse by humanitarian workers constitute acts of gross misconduct and are therefore grounds for termination of employment;
2) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;
3) Exchange of money, employment, goods, or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour is prohibited. This includes exchange of assistance that is due to beneficiaries;
4) Sexual relationships between humanitarian workers and beneficiaries are strongly discouraged since they are based on inherently unequal power dynamics. Such relationships undermine the credibility and integrity of humanitarian work
5) Where a humanitarian worker develops concerns or suspicions regarding sexual abuse or exploitation by a fellow worker, whether in the same agency or not, s/he must report such concern;
6) Humanitarian workers' agencies are obliged to create and maintain an environment which prevents sexual exploitation and abuse and promotes the implementation of their code of conduct. Managers at all levels have particular responsibilities to support and develop systems which maintain this environment.

According to Kanetake (2012), the UN SG had come to realise that, because of the leniency of the UN towards its Peacekeepers, they could be perceived – and perceive themselves – as being above the law. Consequently, in October 2003, under the request of the UNGA, the then UN SG Kofi Annan issued the Bulletin on Special Measures of Protection which embodied the new commitment of the UN to reclaim its reputation (Kanetake, 2012). This commitment was also known as the *Zero Tolerance Policy.* In the second Section, the SGB outlined that the provision drafted thereafter would apply to all UN Staff including members of organs and programmes administered by the UN (UN Secretariat, 2003). In the same Section, it also prohibited any act of Sexual Exploitation and Abuse and encouraged a "particular duty of care towards women and children" pursuant International Humanitarian Law (UN Secretariat, 2003, Art. 2.2). An important aspect of Section 3 is the recognition of the "inherently different power dynamics" (UN Secretariat, 2003, Art. 3.2(d)). In Section 4, titled *Duties of Heads of Department, Offices and Missions,* the UN SG proposed improvements for on-site Operations. Among those, it is important to notice the appointment of an Official "to serve as a focal point for receiving reports on cases of sexual exploitation and sexual abuse" (UN Secretariat, 2003, 4.3). This Bulletin, however, did not provide new and improved sanctions for UN Staff suspected of SEAs. Section 6 called for the "termination of any cooperative arrangement" with non-United Nations entities which were linked to SEA-type activities (UN Secretariat, 2003, Art. 6.2) and Section 5 laid out that there might be cases in which a member of staff might be referred to national authorities for criminal prosecution (UN Secretariat, 2003). In practice, this has hardly ever happened.

Kanetake (2012) suggested that the ZTP could be divided into a five-steps implementation strategy broken down into the (i) application of the codes of conduct, (ii) receiving of allegations, (iii) investigations, (iv) disciplinary actions, and (v) criminal prosecutions. Kanetake (2012) argued that out of the five-steps implementation strategy of the ZTP, only two were under the authority of the UN, and this gave cause for concern. The first step – application of the Codes of Conduct – for instance, was challenging and lengthy to achieve due to the variety of UN Peacekeeping personnel. For civilian volunteers and UN staff, the process consisted simply of revising the Conditions of Service, whereas, for military contingents and Formed Policy Units, collaboration with contingent-contributing countries was indispensable (Kanetake, 2012). The Ten Rules of 1997 were revised to fit the standards of the 2003 Bulletin (UN General Assembly, 2006, p. 13) – revision that was also undertaken for all other UN Codes of Conduct. The memorandum of understanding (MOU) signed by the UN and TCCs was also revised in 2007 and provisions for non-compliance were added (UN General Assembly, 2007).

3.2 SUMMARY

This Section outlined a brief history of the Department of Peacekeeping Operations. It delineated the main categorisation of the Peacekeeping personnel – military, police and civilian – and the different tasks assigned to them by the United Nations and the Department of Peacekeeping. These tasks range from the purely administrative duties to the monitoring and education of the respect for Human Rights. It is clear, therefore, that the United Nations and the DPKO do expect a high level of understanding and implementation of Human Rights and International Humanitarian Law on the Peacekeepers part.

The second Section introduced the legal framework of the Peacekeeping Forces. The chronological setting this thesis follows helps in the understanding of the changes and, possibly, the improvements that were put in place by the UN through its institutions, mainly the UNSC and DPKO. The Zero Tolerance Policy was developed in an independent Section because it is the most important document that has emerged from the United Nations on Peacekeeping SEA. Although it is not the most comprehensive strategy of the UN, it is the first document that aligns all issues mentioned in the years preceding 2003.

4. LITERATURE REVIEW

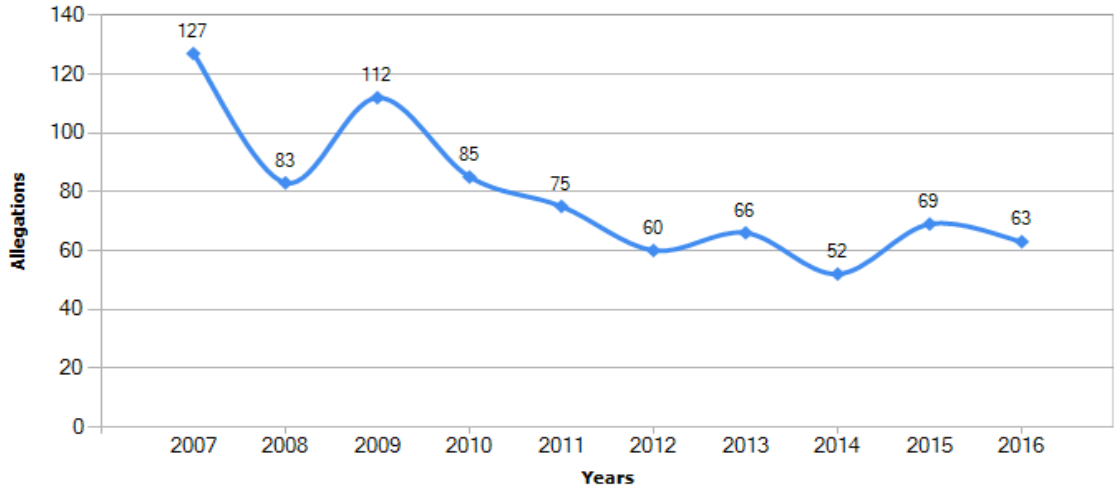
The Chapter presents a review of the literature to date on the topic of Sexual Exploitation and Abuse in Peacekeeping Operations and, more specifically, the issues with and solutions to this matter. It is important to remember that, though this thesis does not focus on all the solutions that were ever proposed on the matter, it draws from most academic works to find its results. Firstly, this Chapter presents what SEAs are and their implications on the Organisation. Secondly, the immunity system is reviewed and linked to the matter of the lack of accountability for military, police, civilian personnel and the UN itself. Thirdly, the focus shifts onto effective remedies available for the victims of SEAs. Lastly, the topic of women in Peacekeeping Operations is reviewed to understand the contradictions on the issue within the academic world.

4.1 HISTORY OF SEAS

Sexual violence and abuse have been factors of warfare since the beginning of time. Askin (1997) writes that women were downgraded as part of the spoils of war and Thomas and Ralph (1994), but already Brownmiller (1975), argue that war rape itself has been downplayed as an unfortunate but inevitable effect of having sent men to war. Firstly, this Section introduces the evidence of Sexual Exploitation and Abuse (SEA) starting in the early 1990s when the first allegations came to the surface. Secondly, it presents the UN effort to report the allegations which increased over the years, although with many criticisms attached. Thirdly, this Section provides an overview of the reasons why scholars have investigated this issue, aside from the most obvious physical and psychological implications of SEA on women. These reasons include the threat to the UN legitimacy and perceived impartiality, the hindrance to gender equality, the increase of mistrust towards the Organisation and the serious health menace to the local population as a whole. Fourthly, the concept of Peacekeeping Economy is explored and the theories on forced prostitution are winnowed. Lastly, the MONUC/MONUSCO Operation is reviewed to understand the aforementioned issues in the reality of one of the longest UN Peacekeeping Missions.

While it is clear that rape in warfare was ever-present, the world was shocked when in 1993 it emerged that rape was a common practice also among the Peacekeeping Forces for the protection of Human Rights of Civilian Victims of War (Askin, 1997). The cases of Bosnia and Herzegovina, Sierra Leone, Rwanda, Burundi, Ethiopia, Haiti, the Democratic Republic of Congo, Kosovo, Somalia, and Sudan raised for the first time a wave of indignation at the international level, giving the possibility to start the talk about ordinary sexual violence carried out by Peacekeepers. Grady (2010) pointed out that, due to the high concentration of UN presence in the African continent, most of the allegations surged from there.

In 2007, the UN CDU and the DPKO Department of Field Support established the Misconduct Tracking System, which consisted in a classified database to collect all allegations of misconduct (not only SEAs) by Peacekeepers (Odello & Burke, 2016). Numeric data is made public annually by the CDU. In the graph below, a decrease in the reporting of SEA allegations over the years can be seen.



Reported decrease in the reporting of Sexual Exploitation and Abuse by Peacekeeping personnel. (UN Conduct and Discipline Unit, 2016)

Cskay (2008), Grady (2010) and, especially, Jennings (2008), however, remind that it is vital to understand that SEA allegations that manage to get reported are an infinitesimal part of the real number of victims who, often, do not report the abuses because of different reasons including cultural and patriarchal norms (Karim & Beardsley, 2016), and gender-based bias in their societies.

Tschiband (2009) divides SEAs into three different categories: (i) sexual engagement with regular prostitutes, (ii) sexual relationships with adult women under protection, and (iii) sexual relationships with underage individuals. According to Unicef, underage individuals are all those who are under the age of 18 as children regardless of the local law and the physical appearance of the child. While all of the acts mentioned by Tschiband are considered unlawful, Lynch (2004) argues that it can be easy for Peacekeepers to misunderstand the signals given by the Organisation itself. One commonly reported practice in UN Missions, for instance, is to distribute packs of condoms which seemingly functions as a "green light" for sexual activity (Lynch, 2004).

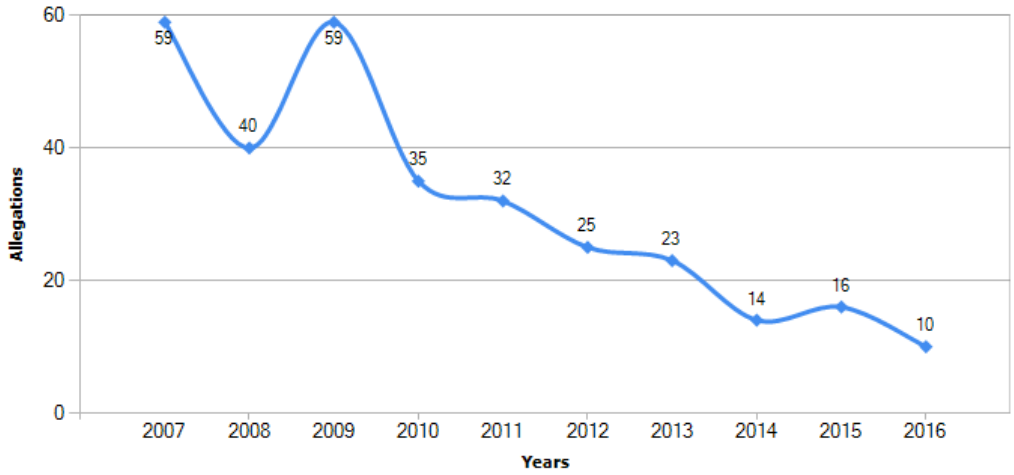
Drawing from different scholars' work, it can be said that SEA in Peacekeeping Missions are damaging for a variety of reasons in addition to the more obvious physical and psychological traumas, which are nevertheless very relevant (Karim & Beardsley, 2016). Firstly, Karim and Beardsley (2016) argue that SEAs committed by Peacekeepers lead to *mistrust* among the local population who will not cooperate with the UN in the activities essential for the rebuilding of the

society. Grady (2010) goes further to suggest that any SEA constitute a *threat to the legitimacy* of the Mission and the UN. Secondly, Grady (2010) highlights that sexual activity, even if lawful, breaches the *Principle of Impartiality* preached by the UN and future implementations of the responsibility to protect might be compromised because of this type of misconduct. This has been proven true on several occasions. Whitworth (2004, pp. 61-71) shows that in Cambodia the Khmer Rouge used the Peacekeepers' sexual relations with Vietnamese women to further the propaganda that Western forces supported Vietnam's interference in Cambodia. Dallaire (2004, pp. 183-4) presented a similar argument for Rwanda where local news was calling into question the impartiality of Belgian Peacekeeping troops who were notoriously engaged in sexual activity with Tutsi women. Thirdly, Frerichs *et al.* (2012) underline that SEAs constitute a *serious health threat* as they contributed to the spreading of cholera in the MINUSTAH Operation, killing around 6,000 Haitians, and furthered the never-ending struggle against AIDS in the African continent due to the large presence of transitional sex in all Missions. Lastly, multiple scholars have also argued that SEAs *hinder* the immense work on *gender equality* that both governmental and non-governmental organisations do in these societies which are often under-developed in this field (Kronsell, 2012; Karim & Beardsley, 2016).

A phenomenon linked to Peacekeeping Mission which causes a rise in SEAs is the so-called *Peacekeeping Economy* and, specifically, Peacekeeping Prostitution (Detraz, 2012). Jennings defines the term peacekeeping economy as the "industries and services that come into being when a Peacekeeping Operation arrives in an area" (Jennings K. , 2010, p. 231). Detraz (2012) argues that one of the main elements that emerge from these economies are indeed prostitution networks and that most of the allegations of SEAs stem from these networks, as pointed out by the 2006 Report of the UN SG (UN General Assembly, 2006). In 2005, the Zeid Report outlined that women and girls who lose their families during the conflict are forced to provide for themselves and, since they are often uneducated and poor, resort to prostitution to escape even deeper poverty (UN General Assembly, 2005, p. 9). However, Higate and Henry (2004) point out that, while most Peacekeepers and officials have tried to argue the voluntary nature of these services, in most cases prostitution is the result of limited economic opportunities and, therefore, must be classified as "forced prostitution" (Mazurana, Raven-Roberts, & Parpart, 2005). Whitworth (2004) and Bellamy *et al*. (2004) presented evidence of the UN Mission to Cambodia (UNTAC) where prostitution rose in the country from around 6,000 prostitutes in 1992 to more than 25,000 during the Mission. Higate and Henry (2004) also highlight the consequent phenomenon of *peace babies* born from the intercourse between Peacekeepers and local women.

Much research has focused on the DRC in the **MONUC/MONUSCO** Mission. This dissertation will also use this Mission as the primary example of SEAs in practice. Among others, the main reasons

are that this has been the longest standing Operation with one of the highest numbers of allegations of SEA (Detraz, 2012). Murphy (2006), among other scholars, reported that the cases of SEAs involved hundreds of soldiers from Belgium, France, Uruguay, Pakistan, Nepal, Morocco, Tunisia, and South Africa. The Peacekeepers engaged in what is commonly known as *survival sex* meaning the exchange of sexual favours for food, water or small gifts in this instance to girls as young as thirteen, many of whom became pregnant following the rapes suffered at the hands of the same UN Peacekeepers. These girls were renamed by the Washington Post the "One-Dollar Girls" (Wax, 2005) and it was thanks to the extensive media reports on the issue that the OIOS began its investigations in the city of Bunia in the period of May – September 2004 (UN General Assembly, 2005). The OIOS MONUC Report unearthed proof of "regular and widespread sexual contact by Peacekeepers with underage girls" (Murphy, 2006, p. 534) who indeed were engaging in forced prostitution to obtain food or small amounts of money. Murphy (2006) reported that allegations could not be corroborated because of different factors, two of which are common in all field investigations: the passing of time and the age of the victims. The OIOS MONUC Report also condemned the conduct of the Peacekeepers which also violated the duty to protect the most vulnerable members of, in this case, the Congolese society (UN General Assembly, 2005). To re-establish credibility, the UN opened the MONUC Office for Addressing Sexual Exploitation and Abuse. In her report to the DPKO, Nicola Dahrendorf (2006) wrote that their job consisted of conducting investigations, develop policies to contrast the spread of SEAs, and train and raise awareness on this issues. In the report, Dahrendorf (2006) also mentioned that the Office conducted 111 investigations which led to several disciplinary charges and helped harmonise the investigatory and reporting system in MONUC. However, the CDU reports were much lower as it can be seen in the following chart:



Reported allegations of SEA in the MONUC/MONUSCO Operation (UN Conduct and Discipline Unit, 2016)

Though the investigations helped in improving the international community's opinion on Peacekeeping Missions and the UN at large, Clayton and Bone (2004) pointed out that the

Organisation had damaged its reputation when it did not enforce its own rules and/or pressured TCCs on their part of the enforcement measures.

4.2 SEAs, Immunity and Accountability

This Section reviews the provisions put in place by the UN and TCCs to hold the perpetrators of SEAs accountable. This dissertation uses Murphy's summary of the three main documents of the legal framework usually signed by all Peacekeeping Missions. These documents are: (i) a UNSC or UNGA resolution to establish the intervention of the PKOs, (ii) a Status of Forces Agreement (SOFA) between the UN and the host state, and (iii) a memorandum of understanding (MOU) between all participating states and the UN (Murphy, 2006). A line is drawn to divide the three main categories of UN Peacekeeping personnel, namely military, police and civilian and particular attention will be given to the immunities they each enjoy. Lastly, the particular character of the United Nations' organisational immunity will be reviewed.

The practice relative to damaging acts by Peacekeepers highlights a series of critical elements starting from the unclear legal framework (Zwanenburg, 2008) and the precarious role of the UN as a depository of allegations, and its lack of power in the investigation procedures (Kanetake, 2012).

The starting point in this regard concerns the allegations of SEAs. They are received by the Conduct and Discipline Unit and its respective in-mission Conduct and Discipline Teams. They are subsequently investigated by the Investigations Division of the Office of Internal Oversight Services in the UN Secretariat (UN Secretariat, 1994). However, as Kanetake (2012) points out, the UN legal authority to conduct investigations is particularly limited, especially with regards to national military contingents. In fact, the UN had started investigations against military contingents in Missions such as MONUC in 2004 (UN General Assembly, 2005) and 2006 (UN General Assembly, 2007). However, the revision of the MOU model in 2007 limited the influence of the UN in favour of that of TCCs which now had "primary responsibility for investigating misconduct" (UN General Assembly, 2007, p. 3).

The **military personnel's** legal framework is constituted by the Status of Forces Agreements by the United Nations with the host State. The SOFAs normally provide privileges and immunities to those in charge of PKOs and their personnel. In particular, they recognise the immunity from the civil jurisdiction of the host state for all acts performed in an official capacity by the components of Peacekeeping Operations (UN General Assembly, 1990, Art. 46). The recognition of such immunity is also provided for by Article 105 of the UN Charter (Murphy, 2006). Odello and Burke (2016) highlight that having immunity does not preclude Peacekeepers from being investigated. The United Nations, in fact, is not called to account for the conduct *ultra vires* of Peacekeepers, in the event that these acts are not carried out in an official capacity (UN General Assembly, 1990). However, *ultra*

vires conduct can be carried out as an *operational necessity* (UN General Assembly, 1990). The decision to determine what constitutes an operational necessity rests, ultimately, on the Commander of the Force who is called to respect a number of guiding criteria. First and foremost, these criteria involve the principles of good faith and of proportionality. After due investigations, if disciplinary measures are deemed necessary, they are taken following the laws and regulations of the Peacekeepers' countries of origin (Siekmann, 1991, p. 134). It must be said, however, that the UN codes are generally incorporated into the military laws and regulations of participating countries to render the disciplinary measures somewhat similar across the different TCCs (Kanetake, 2012).

Formed Police Units are bound by a similar system outlined in the DPKO Directive for Disciplinary Matters Involving Civilian Police Officers and Military Observers (Department of Peacekeeping Operations, 2003, para. 2). Disciplinary measures often include repatriation (Department of Peacekeeping Operations, 2003). Odello and Burke (2016) mention that the most common sanctions for military personnel are of a disciplinary and administrative nature and consist of dismissal, repatriation and career sanctions. Detraz (2012) presents the newsworthy example of the repatriation of around 100 Sri Lankan Peacekeepers serving in the UN Stabilisation Mission in Haiti (MINUSTAH), making this the largest withdrawal of UN Forces in the history of Peacekeeping. However, to reaffirm the inconclusive nature of TCCs' prosecution, Detraz (2012) writes in her book that it is not known if any Peacekeeper has been prosecuted by the Sri Lankan government. Contrary to UN civilian personnel, the DPKO Directive for Disciplinary Matter Involving Civilian Police Officers and Military Observers makes no reference to dismissal from the force. According to Kanetake (2012) that is probably because they continue to be employed by their own countries.

C**ivilian personnel** are granted *functional immunity* as in the "immunity covering activities performed or incidental to official duties" (Dixon, 2013, p. 199). The immunity system is guaranteed by the Convention on the Privileges and Immunities of the United Nations (UN General Assembly, 1946) which also applies to the Commander of the military Forces and the military observers. As in the case of SOFAs, the Convention still requires the United Nations to identify alternative forms to resolve disputes. Furthermore, the Secretary-General maintains the capacity to waive immunity if the case at hand is deemed severe enough (UN General Assembly, 1946). The disciplinary authority over UN civilian personnel is retained by the United Nations in the capacity of the employer (UN Secretariat, 2011). The most common disciplinary measure of civilian and voluntary staff accused of SEA is their dismissal from all UN services as outlined by the 2011 Staff Rules and Staff Regulations (UN Secretariat, 2011) However, Simic (2012) highlights that there has never been a case of dismissal referred to the nation of origin. This matter will be explained further in the following Chapter. In general, cases of sexual violence are handled by the country on which territory

they happened thanks to the principle of *territorial jurisdiction* (Dixon, 2013). However, due to the immunities they enjoy, civilian Peacekeepers are not pursuable by law in the host country.

While most research has focused on military personnel, in 2006 Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations, redirected the attention towards civilian personnel which accounts as the perpetrator for a large number of allegations of SEAs and for the least numbers of Peacekeepers held to accountability (United Nations, 2006). Accordingly, most scholars argue that while Peacekeeping troops are never under the total control of the UN (Wickremasinghe & Verdirame, 2001), civilian personnel are under the complete control of the UN and, therefore, their behaviour reflects mostly on the Organisation's reputation (Sweetser, 2008).

The last type of immunity to consider is that of the **United Nations** itself which enjoys what is known as *organizational immunity* or the immunity attached to an organization that prevents the latter from being sued in a national court for the misconduct of its personnel (Dixon, 2013, p. 204-205). Articles 103 and 105 of the UN Charter enshrine this immunity. In fact, Article 103 quotes:

> *In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail (UN Charter, 1945, Art. 103).*

Furthermore, Article 105 quotes:

> *1. The Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.*
>
> *2. Representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation. (UN Charter, 1945, Art. 105).*

For the United Nations, this immunity is strengthened by the Convention on Privileges and Immunities which states that "the United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity" (UN General Assembly, 1946, Art. 2.2). In the ruling of the *Mothers of Srebrenica case*, the European Court of Human Rights justified the absolute immunity of the UN by stating that "to bring such Operations within the scope of domestic jurisdiction would be to allow individual states, through their courts, to interfere with the fulfilment of the key Mission of the United Nations […]" (Stichting Mothers of Srebrenica v. The Netherlands, 2013, p. 41). Rashkow (2014) argues that this immunity from national jurisdictions is indispensable for many purposes but was not originally established to grant impunity against righteous claims made by third parties against the Organisation. Based on this legal argument, Sweetser (2008) argues that international organisations immunity *per se* precludes the victims from obtaining any effective

remedy based on the concept of employer liability. The question of impunity for the UN was raised in two main instances: namely the *Mothers of Srebrenica Case* and the Haiti Cholera victims example (Rashkow, 2014). In the following Chapter, this thesis will analyse the possibility to challenge this type of immunity if such remedies are not granted.

4.3 SEAs and Effective Remedy for Victims

This Section presents the focal point of the thesis' literature review and the scope of the dissertation. Hereafter, this review presents the opinions given on the remedies for the victims of SEAs provided by the academic world. First and foremost, it must be recognised that these opinions arose over the years as scholars became more aware of the discrepancies and the differences between the rights of Peacekeepers accused of wrongdoings and those of their victims. Scholars have suggested different methods to tackle this problem. Henceforth, the concept of compensation and the possibility of a systematic mechanism of retribution is reviewed. Afterwards, the possibilities of appeal to national courts and of diplomatic protection are considered. Subsequently, the protection mechanism is scrutinised and, lastly, the prospect of TCC responsibility is contemplated.

This thesis struggled with the decision of defining the term in which to call the protagonists of the research, namely those who have been abused or exploited sexually by UN Peacekeepers. While the researcher was inclined to use the term *survivor*, as most feminist literature does, not all literature agrees. In fact, both academic literature and UN documents have been consulted and the most common nomenclature given to the subject in question was that of *victims*. The term survivor was preferred originally as its connotation gives a sense of agency of the victims and mobility within his or her environment, while the connotation of the term victim is tendentially static. However, as this thesis refers to a judicial system and a mechanism of compensation, the use of the term victim is consistent with the previous literature and was therefore chosen as the most adapt.

The picture that emerges from the majority of research in the field is the lack of mechanisms, and the misuse thereof, available to the victims of abuses in order to obtain justice (Detraz, 2012; Odello and Burke, 2016). This issue is vital because, as Lord Denning wrote, "a right without a remedy, is not a right at all" (Gouriet v. Union of Post Office Workers, 1978). The OIOS itself argued that the "effectiveness of enforcement against Sexual Exploitation and Abuse is hindered by a complex architecture, prolonged delays, […] and severely deficient victim assistance" (UN Office of Internal Oversight Services, 2015, p. 4). According to Sweetser (2008), while Peacekeeping personnel have a recognised right to due process and fair trial in the instance of accusations, victims are not recognised the analogous right to safely file a complaint and the subsequent due investigation. Sweetser (2008) also argues that the UN provides a series of policies concerning their *ex ante* preventative stance such as gender mainstreaming and the addition of guidelines. However, they fail

to provide *ex post* reparation for the victims of SEAs whether it would be monetary compensation or criminal accountability for the perpetrator (Sweetser, 2008). Francioni (2008) has criticised the aforementioned framework for it makes it very difficult for individuals to legally act when the protection of their rights has been violated by the Peacekeeping staff. That happens, in fact, in spite of the widespread awareness in the international community about the customary norms that recognise the right of individuals to access to the national and international courts (Francioni, 2008).

Compensation, or the monetary recompense for a suffered tort, is a form of remedy highly debated by scholars. International Humanitarian and Criminal Law entrenched this right in the Rome Statute which highlights the importance of financial compensation and created the Trust Fund for Victims (Rome Statute of the International Criminal Court, 2002, Art. 79). Despite SEAs at the hands of Peacekeepers do not arguably fall under the jurisdiction of the ICC, the provision of the Trust Fund for Victims sets a precedent that Odello and Burke (2016) argue should be followed by the United Nations. However, there are different schools of thought in the academic world among which some would argue that compensation is not beneficial as it will never rectify a crime (Radin, 1993). Sweetser (2008), however, objects to this argument by countering that without compensation survivors will be consigned to the perennial state of victims. MacKinnon (2000) argues that granting reparations is necessary to support victims that suffered conflict and trauma situations alike. Likewise, the Zeid Report defends a compensation system in support of victims of abuses that led to the birth of the so-called "Peacekeeping babies" (UN General Assembly, 2005, p. 72). Harrington (2005) further discusses the importance of compensation for victims who also contracted HIV/AIDS and are lacking healthcare provisions. Lastly, Sweetser (2008) recalls the purely symbolic importance of compensation as a sign that the UN recognises and is concerned about the victims of SEAs. On the application of effective remedy, Reinisch (2001) highlights that the United Nations has already provided effective remedy through compensation in previous situations, thus establishing a precedent. This happened in 1965 when Congolese nationals were compensated for the damages received on their property and person (Wickremasinghe & Verdirame, 2001). This type compensation is provided for by Section 29 of the Convention of Privileges and Immunities of the United Nations which cites:

> *The United Nations shall make provisions for appropriate modes of settlement of:*
>
> *(a) Disputes arising out of contracts or other* ***disputes of a private law character*** *to which the United Nations is a party;*
>
> *(b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General (UN General Assembly, 1946).*

The argument of the "disputes of a private law character" will be analysed in the following Chapter when this thesis will argue that indeed SEAs fall under this category.

Most scholars make reference to the possibility for a systematic mechanism to provide compensation to victims as there currently is not a permanent system to address this issue (Sweetser, 2008). At present, the United Nations has allocated this responsibility onto the so-called *claim review boards*. These boards are mission-by-mission facilities where claims of abuse and subsequent compensation are investigated and decided upon. Shraga (2000) recalls the statute of limitations for this claims which is six months and the payment cap of $50,000 USD. Furthermore, the *Gashi Case*[2] highlights that the UN has already put some compensations procedures in place and could use them to "re-establish international legitimacy" (Sweetser, 2008, p. 1665). However, Shraga (2000) also points out that these boards collect claims against the UN as a whole or against a specific TCC; they do not, however, handle claims regarding individual Peacekeepers.

Alternative means to achieve justice are also often unsatisfactory. Casolari (2009) argues that the possibility to appeal to a national court, provided that the host State is still in possession of judicial structures worthy of the name, is precluded by the immunity mechanism. On the other hand, he argues that even the use of diplomatic protection is hardly viable (Casolari, 2009). The type of protection granted by this institution allows the State of nationality of the individual who has suffered an infringement of their rights by another State – or another subject of international law – to act in his protection. However, it is also known that the decision to act in a diplomatic way is the result of a purely discretionary decision of the State which thus can decide, for whatever reason, not to intervene (Francioni, 2008). In addition, Odello and Burke (2016) note that the recourse to diplomatic protection is conditioned by the prior exhaustion of domestic remedies. Even in this case, there is no guarantee of the fulfilment of the right of the individual.

Dorigo (2002) asserts that it is even harder to activate other procedures to ensure UN responsibilities given the lack of participation of the UN to conventions protecting Human Rights and, therefore, the protection mechanism provided therein. Murphy (2006) points out that in the *WHO Agreement Case*, the International Court of Justice referred to the obligations that international organisations have under International Customary and Humanitarian Law. However, it is the same Murphy (2006) who recognises that the UN does not bear the position to be a party to the Geneva Conventions or its

[2] The *Gashi Case* involved three Kosovar brothers who had been held in detention in the UNMIK Operation without indictment for the period of twelve months. Their case was brought before the European Court of Human Rights which deliberated that their detentions was in violation of the right to Due Expedition under the European Convention on Human Rights. The three brothers were thereafter released and the Commission on Compensation for Wrongfully Accused, Convicted and/or Detained Persons granted them with a confidential sum (OSCE Mission in Kosovo; UNMIK, 2000-2001).

Additional Protocols. Furthermore, once the UN had incorporated provisions of International Humanitarian Law to the Force Regulations, MOU models, and SOFA models, it did no longer have direct responsibility to ensure the respect of IHL by its Forces.

Some scholars have called into question the responsibility of the sending states. Kanetake (2012) notes that the effective implementation of the ZTP can be difficult to implement due to the political pressure put on the UN which is provided with limited power and limited by the political willingness of TCCs to follow-up on investigations.

4.4 SEAs AND WOMEN

This Section introduces the topic of women in Peacekeeping Operations. Though this thesis does not focus on this suggestion as a solution, to omit this field of research would be erroneous due to the vastness of research and academia present. Indeed, if proposed solutions were to be ranked, the addition of women in PKOs has been the longest and most debated piece of literature over the years. In this Section, the UN perspective on the issue is regarded first. Subsequently, the opinions of scholars for and against these measures are winnowed. Lastly, two macro concepts of the literature are inspected, namely militarized masculinity and gender mainstreaming.

The request for women in Peacekeeping Operations has not been an ever-present need in the eyes of UN military and civilian personnel. Vayrynen (2004) points out that it was not until the 1990s that the absence of women in PKOs started raising concerns among civil society and the international community at large. Detraz (2012) focuses on the fact that, until 2009, only seven women had held the position of Special Representative to the UN SG. Simic (2010) also notes that, in general, female military personnel in PKOs has never covered more than 2% of the total, which increased to 4% in 2011 (Detraz, 2012). These numbers opposed those of the conflict-afflicted populations which are mainly composed of women and children (UN Security Council, 2000). The pressure to include women in PKOs grew, also thanks to the support of documents such as the Windhoek Declaration and the Namibia Plan of Action and on October 31, 2000, the UN Resolution 1325 *Women, Peace and Security* was unanimously approved (UN Security Council, 2000). Over the last fifteen years, this document has been the main reference for Gender Issues in Peacekeeping and, in general, in the military. The document makes explicit reference to the impact of war on women and to the contribution that women can provide to the resolution of conflicts. The UNSC Res. 1325 (2000) focuses on four priority objectives:

- The recognition of the fundamental role that women can play in the prevention and resolution of conflicts;
- The adoption of a "gender perspective" in approaching the issues related to the effects of conflicts and the definition of peaceful solutions;

- The greater participation of women in the discussions to prevent and solve conflict and crisis situations;
- The increased training on issues related to gender issue.

UNSC Res. 1325, is also known as the *3Ps Resolution* because it aims to ensure the *Prevention*, *Participation* and *Protection* of women in modern-conflict scenarios and at the same time represents the starting point for the approval of a subsequent series of more content-specific resolutions (Simic, 2012). A common factor among all these resolutions is the stressing need for full participation of women at all levels and phases of the conflict.

Betts Fetherson (1998, p. 167) reported that six in seven Peacekeepers are soldiers and men and, therefore, a good portion of academic literature in this area surrounds military-based research. Simic (2010) also points out that because of this large number of soldiers, the majority of PKOs personnel has been trained in combat. According to many scholars, this fact plays an important role when discussing the presence of women in PKOs. In its report on Gender Mainstreaming in 2000, the DPKO claimed that "Women's presence improves access and support for local women; it makes men Peacekeepers more reflective and responsible; and it broadens the repertoire of skills and styles available within the Mission, often with the effect of reducing conflict and confrontation" (Department of Peacekeeping Operations, 2000, p. 4). Jennings (2011) highlights six advantages are often reported in academic literature, namely higher protection of women and children, better assistance to the victims of SEAs, deterrent effect on their male counterparts (Karim & Beardsley, 2016), unlikelihood of women being the perpetrators, improvement of relations with local women (Detraz, 2012), and inspiration to a more equitable gender perspective (Karim & Beardsley, 2016).

There are two main problems that scholars like Jennings (2011), Simic (2010), Valenius (2007), and more point out as they call the decision of including women in the Operations "essentialist in nature" (Simic, 2010, p. 189). The first issue is that this representation implies that women are more nurturing and peaceful in nature (Simic, 2010). The second issue is the assumption that the achievement of gender balance will automatically transfer into gender mainstreaming and the halt to Sexual Exploitation and Abuse (Valenius, 2007). Simic summarises the duty of UN Peacekeeping women as the ones who are deployed to "save the image of the UN and its damaged reputation, rather than to achieve gender equality" (Simic, 2010, p. 190). In their study, Karim and Beardsley (2016) conclude that there is no evidence that adding women to PKOs decreases SEAs allegations. To further their conclusion, they bring forward the example of South Africa. Though it is the TCC with the highest number of female Peacekeepers, it has also been the country with the highest number of SEA allegations in all UN Missions, including the aforementioned MONUC/MONUSCO mission (Karim & Beardsley, 2016). However, there are great discrepancies in this field of academia and also within the same researchers' work.

4.4.1 Militarized Masculinity

In the definition of Lopes, militarized masculinity "is a combination of traits and attitudes that are hyper-masculine, hegemonic, and are associated primarily with military soldiers" (Lopes, 2011, p. 2-3). Stiehm (2001) highlights its pervasiveness in the military world due to the masculine hegemony and gender dichotomy that characterise the division of roles, and the predominance of men in such environment. Stiehm (2001) also points out the inherent and legitimate use of violence that is common in this world.

Militarized masculinity is important when discussing the relationship between locals and Peacekeepers. According to Simic's (2010) most victims of sexual assault feel more comfortable in reporting to a woman officer. However, she highlights that women soldiers are not necessarily the best fit for the position (Simic, 2010). Jennings (2008) goes further to say that female Peacekeepers are rarely willing to report their male colleagues due to several reasons such as loyalty to their country or to their comrades. Lutz *et al.* (2009) researched that women in PKOs are often reticent to their male counterparts as they choose to reduce the bias that sees them as non-team players. Moreover, Sjoberg and Gentry (2007) approach the issue by underlining that scholars and DPKO alike have overlooked the capability for women in militarized context to be themselves the perpetrators of SEAs. Lastly, Kronsell (2012) highlights the radicalism of these statements, however, points out that women in PKOs, and especially in the troops, have been exposed to years of militarized masculinity and, therefore, are less likely to bear those traditionally feminine traits.

4.4.2 Gender Mainstreaming

Another key concept in the Peacekeeping context is that of *gender mainstreaming* which was endorsed within the Platform for Action at the Fourth UN World Conference on Women in Beijing in 1995 (Detraz, 2012). It entails the

> *"strategy to achieve gender equality, by assessing the implications for women, men, boys and girls of any planned action and adopted with the aim of ensuring that situations and experiences of men and women are taken into account in the planning, implementation, monitoring and evaluation of policies and programs to put into practice" (UN Office of the Special Adviser on Gender Issues and Advancement of Women, 2002).*

To simplify this concept, Simic (2010) explains that gender mainstreaming implies that all PKOs should investigate, before taking further action, what could be the consequences on all the actors involved directly and indirectly, in order to implement those as correctly as possible to the gender perspective and achieve gender equality. Jennings (2008) highlights that such an action cannot disregard the conduct of gender analysis of the context in which they operate, i.e. the understanding of the relationship between men and women in a specific society.

4.5 SUMMARY

This Chapter provided a literature review of the work of scholars in the field of Sexual Exploitation and Abuse at the hands of Peacekeepers. The Chapter, divided into three main Sections, started with an overview of the (known) history of SEAs in Peacekeeping Operations and a commentary by the scholars that have focused their work on documenting them. It outlined the damages that these allegations do the UN itself namely the increased mistrust and the threat to the legitimacy of the Organisation, the breach of the Principle of Impartiality, the serious health threat to the local population, and the hindrance to gender equality.

The second Section concentrated on the immunities of the personnel and the Organisation, and the consequent lack of accountability. The military personnel, according to the review, could be the sector which, despite the immunity to be tried in the host state, is more likely to be held accountable in their TCC. In fact, although employed temporarily by the UN, military personnel are ultimately under the command of their country's military structure which has the final jurisdiction. Civilian personnel, on the other hand, enjoy functional immunity as their uniformed counterparts but are solely employed by the Organisation. This entails that, if the UN does not make provision for holding them accountable, they are tried in neither the host state nor their country of origin. While scholars have argued for the UN's employer liability which could hold them accountable in international and domestic courts, the Organisation enjoys full organisational immunity.

Continuing on the issue of effective remedy, the third Section focused on different ways to provide a remedy to the victims of SEAs. Firstly, the Section concentrated on compensation as a common practice to redress the victims of abuses. Secondly, the Section presented a mechanism of compensation thoroughly studied by Sweetser (2008). Indeed, the following Chapter will draw from this paragraph and discuss this option as one of the two main solutions to the research question. The last three paragraphs represent perhaps the most negative approach to effective remedies. The mentioned scholars, in fact, concluded that the appeal to national courts and diplomatic protection are not viable remedies for the victims of SEAs. They further argued that protection mechanisms tendentially granted by International Customary and Humanitarian Law are not available to victims of crimes committed by UN personnel.

5. SEAs: Increasing Accountability and Providing a Remedy

This Chapter analyses the literature review and discusses it in relation to the main research question and the sub-questions of this thesis. Firstly, the question of immunities – organisational and functional – is analysed and the feasibility of a more malleable form of said immunities is considered. This Section also presents the analysis of the interview conducted with professor Spagnolo, Research Fellow in International Law in the Department of Law of the University of Turin (Italy). Afterwards, two solutions from the academic world and the non-governmental sphere are presented and analysed by making use of the previously acquired knowledge. The first solution was retrieved through the interview with professor Mintz, coordinator of the Code Blue Campaign within the NGO AIDS-Free World. The second solution was retrieved in the paper "Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel" by Catherine E. Sweetser.

5.1 SEAs: Private Law Character, Organisational Immunity and Functional Immunity

The first debate one encounters when approaching the subject of Sexual Exploitation and Abuse and the accountability for this crime is the legal basis that can be applied. As the literature review pointed, the United Nations enjoy organisational immunity and therefore is immune to suit by national courts. Rashkow (2014) indicated, however, that this immunity was not intended to shield the Organisation from following international and domestic laws in their activities. In this regards, the scholarly world has been raising concerns that such broad immunity has led to the frequent impunity of the perpetrators of several crimes including, but not limited to, Sexual Exploitation and Abuse. A rise in these claims followed the cases that saw protagonists the Associations of the Mothers of Srebrenica and the Haitian victims of cholera. Hereunder, an analysis of the judgment of the *Mother of Srebrenica case* is outlined.

In June 2007, the Association Mothers of Srebrenica and the families of the victims of the genocide presented in the Netherlands an appeal against the United Nations in order to ensure the accountability of the organisation in the Genocide of Srebrenica (Mothers of Srebrenica et al v. State of The Netherlands and the United Nations, 2012). The case eventually landed before the Supreme Court of the Netherlands which, in April 2012, adjudicated the case in favour of the United Nations. Indeed, in all levels of courts, the United Nations sought, successfully, its immunity from national courts or tribunal as embodied in Article 105 of the UN Charter. The Supreme Court ruled that:

> *Pursuant to the judgment of the International Court of Justice (ICJ) in Nicaragua v. United States of America in which the ICJ interpreted Article 103 of the UN Charter to mean that the Charter obligations of UN Member States prevail over conflicting obligations from another international treaty, whether earlier or later in time than the Charter […] the UN enjoys absolute immunity. […] Following the*

> *decision of the ICJ in Germany v. Italy of 3 February 2012, […] the UN is entitled to immunity regardless of the extreme seriousness of the accusations on which the Association basis its claims in the present instance (Mothers of Srebrenica et al v. State of The Netherlands and the United Nations, 2012, paras. 4.3.4 – 4.3.6).*

The debate on the immunity of the United Nations revolves around the interpretation of Article. 105 of the UN Charter. Although the Article was inspired by the principle of *functionality* (Spagnolo, 2013), in practice there is a tendency to recognise the almost absolute immunity to the United Nations (Reinisch, 2011). This is due to the interpretation of Art. 105 in the light of Art. 2, paragraph 2, of the Convention on the Privileges and Immunities. According to the Article, the organisation enjoys immunity in any judicial proceeding, unless such immunity is explicitly waived. The European Court of Human Rights, for the first time on being asked in the *Mothers of Srebrenica case*, solved the problem by resorting to the nature of the original dispute in which it was asked, in a national court, for the judgement of a UN action rooted in Chapter VII of the Charter (Stichting Mothers of Srebrenica v. The Netherlands, 2013, p. 40). As mentioned in the literature review, this brings the Court to hold that the immunity granted by the Dutch courts to the United Nations was necessary in order to prevent "individual states, through their courts, to interfere with the fulfilment of the key mission of the United Nations" (Stichting Mothers of Srebrenica v. The Netherlands, 2013, para. 154). In doing so the Court decided not to enter the debate on the interpretation of Art. 105 of the UN Charter and above all, it declined to apply its jurisprudence on the subject of immunity. The Supreme Court of the Netherlands went as far as to affirm the *principle of speciality* of the United Nations which puts the Organisation above all other international organisations (Spagnolo, 2013). In the reasoning of the Supreme Court, this speciality is granted by Art.103 of the UN Charter which, applied to the present case, would regulate the conflict between Article 105 of the Charter and Article 6 of the European Convention on Human Rights – Right to a Fair Trial – in favour of the first (Henquet, 2012).

This premise was essential to understand the complexity of removing the Organisational Immunity of the United Nations that would allow for it to be sued in national courts and precludes the Organisation from providing alternative remedies to the victims of crimes committed by its personnel.

As mentioned in the Section on *SEA and Effective Remedies for Victims* of the literature review, the UN must provide a settlement for "disputes arising out of contracts or other disputes of a private law character". According to Professor Spagnolo – interviewed for this thesis, although the UN has never specified that SEAs constitute a damage of a "private law character" in either SOFAs or MOUs, they should be considered as such (Spagnolo, Personal Communication, 2016). Specifically, he argues that all damages to the individual fall normally under private law. Following this line of thought, if

SOFAs and MOUs consider an individual who has been hit by a UN tank to hold such character, he draws the conclusion that SEAs should be regarded in the same way (Spagnolo, Personal Communication, 2016). Sexual violence, at least, should be considered to hold a private law character as it provokes damages of, among others, physical nature to the victim. Conclusively, the SOFAs and, especially MOUs, should contain in their provisions that claims of SEA be treated as claims of a private law character. By analysing the structure of the two model-documents, Professor Spagnolo argues that it could be an easier task for the UN to negotiate the entrance of SEAs in the MOUs (Spagnolo, Personal Communication, 2016). This conclusion is drawn because, according to the MOU model, "the disciplinary responsibility lies always in the TCC's hands" (Spagnolo, Personal Communication, 2016) and, therefore, the UN would be free of remitting their responsibility of employers to the sending country as the country of nationality. Ultimately, this would be a fair solution for military personnel who committed acts of sexual misconduct, but it would nevertheless leave out police and civilian personnel which still accounts for a large portion of the abusers. The solutions to this lack of accountability will be discussed in the following Section.

Rashkow (2014) points out that even in the instance in which the UN would recognise the "private law character" to SEAs, the consequences would not be appropriate for the victims. Considering that most of the previous disputes have concerned damages to property, the current systems foresees an initial administrative dispute that is usually resolved amicably (Rashkow, 2014). In case of a failure in this regard, the dispute is frequently solved through arbitration. Scholars agree, however, that in cases of SEA these are not the ideal conditions under which the issue should be resolved. As an alternative, the SOFAs provide for the creation of *claim review boards.* The functionality of these boards in effect will be analysed in the following Section.

The most notable issue that scholars have reported in the provision of alternative remedy is that the United Nations has rarely provided it. As Rashkow (2014) points out, although SOFAs between the Organisation and the host states provide for standing claims commissions, they have never been established by the United Nations. Spagnolo (2013) is highly critical of this lack of alternative solutions and makes reference to the comparison between States and International Organisations often used by Courts when arguing for the immunity of the latter. He argues that this comparison can be counterproductive to reaching an adequate solution for the victims of crimes committed by Peacekeepers – not limited to SEAs (Spagnolo, 2013).

To better understand the issue, Spagnolo (2013) draws back to the judgement of the European Court of Human Rights in the *Mothers of Srebrenica case.* In its decision the Court takes into consideration separately the issue of the absence of remedies available to the applicants. Spagnolo (2013) argued that it was evident that the decision was intended to exclude the possible absence of alternative

remedies from the analysis of the final judgement, giving it the appearance of an independent existence, but, in fact, not taking it into account for the purpose of the Court's argument. In this instance, the Court uses for the second time a forced analogy with the ruling of the International Court of Justice in the *Germany v. Italy case* in which it was stated that the existence of alternative remedies was not relevant for the purposes of determining the immunity of States (Stichting Mothers of Srebrenica v. The Netherlands, 2013, para. 158). The Court in the present decision seems to fall into the error of renouncing to piece together the delicate relationship between immunities of International Organisations and the absence of alternative remedies. In more general terms, Spagnolo (2013) and Rashkow (2014) noted that the theme of immunities is more delicate in the case of International Organisations. The reason is that, unlike States, they do not tendentially have an internal structure for the receipt of complaints from individuals harmed by an activity that falls within the organisation (Reinisch & Weber, 2004). The above is all the more relevant in relation to the United Nations, inasmuch that the provision of remedies is provided for in Article VIII, Section 29 of the Convention on the Privileges and Immunities of the United Nations. This circumstance could perhaps have led the Court to question the impact of breaches of the United Nations of the requirement to produce remedies in case of "disputes of a private law character to which the United Nations is a party". In fact, despite the adverse outcome to the applicants, the Court pointed out, in a conclusive passage that "[t]here remains the repute that the United Nations has not until now, made provision for the "modes of settlement" appropriate to the disputes here in issue" (Stichting Mothers of Srebrenica v. The Netherlands, 2013, p. 43). Spagnolo (2013) argued that this *obiter dictum,* although it did not affect the previously reached conclusions, it highlighted the fact that there are no alternative remedies for victims of violations of Human Rights committed during Peacekeeping Operations.

Upon completion of the analysis of the decision in the case of the *Mothers of Srebrenica,* one cannot help but conclude that it exists an absolute immunity of the United Nations, which helps to reduce the remedies available for violations of Human Rights committed during Peacekeeping Operations. In the interview, however, Spagnolo was slightly more optimistic. In reference to the case of the *Mothers of Srebrenica*, in fact, he claimed that the Court adjudged the case in favour of the UN "only to the effect that the UN […] would grant an effective remedy for the victims" (Spagnolo, Personal Communication, 2016). He continued by observing that the United Nations has not followed through with this admonishment; in consequence, a Court could "sooner or later" condemn the Organisation (Spagnolo, Personal Communication, 2016).

An analysis of organisational immunity and its possible removal was given previously. That alone, however, is insufficient. The reason is that, while for other crimes of a "private law character" the United Nations assumes responsibility, SEAs are considered criminal acts committed by UN

personnel and not UN actions for which the organisation might be liable to third parties (Rashkow, 2014). Furthermore, it is insufficient because its removal could only entail administrative obligations for the Organisation, but not criminal accountability. As the Comprehensive Strategy on Assistance outlines, assistance and support in the form of "medical care, legal services, support to deal with psychological and social effects of the experience and immediate material care, such as food, clothing, emergency and safe shelter" should be provided for by the UN (UN General Assembly, 2008). As Rashkow (2014) points out, however, the Organisation clearly states that this form of assistance shall not preclude individual personnel to be held individually accountable.

The issue of criminal accountability rests on all levels of Peacekeeping personnel, but it can be argued that it exists a difference in provisions for the success of the prosecutions of the perpetrators. As mentioned in the Section on *SEAs, Immunity and Accountability* in the literature review, the responsibility of the prosecution of military personnel rests ultimately within the TCC capacity. However, civilian personnel should be under the responsibility of the Organisation itself. Many scholars, including Professor Kaila Mintz – interviewed for this thesis, argued that, in fact, most SEAs are committed *ultra vires* by non-military personnel and that within this category lies the largest lack of accountability (Mintz, Personal Communication, 2016). She argued that the functional immunity can never cover Sexual Exploitation and Abuse because there could never be the need to use SEA as a tool to complete a UN-related task (Mintz, Personal Communication, 2016). Professor Mintz is the spokesperson for the Code Blue Campaign which focuses on impunity for civilian personnel in PKOs and how to eradicate the lack of accountability through a project that will be outlined in the following Section. The Campaign has been in contact with the Office of Legal Affairs of the UN which confirmed that, indeed, the PKO's personnel can never claim their functional immunities when accused of SEAs. That is because SEAs are ultimately never part of their duties (Mintz, Personal Communication, 2016). A further problem, according to Professor Mintz, is that, inversely from the tight relationship between TCCs and their troops, non-military personnel is in no way under the control of their country of nationality (Mintz, Personal Communication, 2016). For this reason, it would be ludicrous to impose to the countries of nationality of the UN personnel to try their citizens for crimes committed abroad, moreover under the employment and responsibility of the United Nations. Lastly, Professor Mintz points out the crucial role that non-military personnel play in the training, enforcement of the ZTP, and other tasks during the Operations (Mintz, Personal Communication). Therefore, it would be wrong to dismiss civilian activities as secondary, as oftentimes they are in effective control of the military personnel.

The issue of the lack of accountability of civilian personnel is not highly discussed among scholars who focus more on the military perspective. The latter is more regulated both at the international level – through the United Nations and International Humanitarian and Human Rights Law, and at

the national level. Furthermore, criminal accountability can be of easier reach thanks to the existing martial courts before which all military personnel can be brought. On the other hand, when claims of SEAs – or other crimes – are brought against civilian Peacekeepers, they rest in a limbo between the UN investigatory powers and the lack of judiciary powers. Furthermore, the victims are left without an alternative remedy because the UN has not yet recognised SEAs to be crimes of a "private law character". In the following Section, two solutions from the academic and non-governmental worlds will be brought to the fore.

5.2 Two Solutions On Increasing Accountability and Providing a Remedy

In the previous Section this thesis analysed the question of organisational and functional immunity of the United Nations. The overall perception in the scholarly world is quite negative, however, some scholars rest hopeful that the judiciary branch will sooner or later take a firmer stance on both issues and hold the UN and its personnel accountable for their actions. In the meantime, the victims of the abuses by UN Peacekeepers must not be forgotten. This Section will look at two concrete proposals that derive from the non-governmental sphere and the academic world. The former was proposed by the Code Blue Campaign publicly on October 13, 2016. The latter was presented by Sweetser (2008) in her paper "Providing Effective Remedies to Victims of Abuses by Peacekeeping Personnel". In order, this Section will present the project of the Code Blue Campaign and Sweetser's proposal, and an analysis of the two will be given.

The previous Section outlined the persistent block to the prosecution of UN Peacekeepers due to their functional immunity. As mentioned in the literature review, International Human Rights Law relies on the exhaustion of local remedies. In reality, the immunities enjoyed by both military and non-military personnel prevent the domestic legal systems from completing their tasks. Sweester (2008), Mintz and many other scholars, however, have argued that functional immunity can never be attached to SEA-related acts as sexual violence and the likes can never happen in an official capacity. Wickremasinghe and Verdirame (2001), mentioned already in the literature review, were sceptical about what constitutes functional immunity as there is not an official, international definition. For this thesis' purpose, however, only the functions outlined in the contractual agreements of UN personnel will be considered to grant functional immunities. These functions can be found in the Chapter *Who are the Peacekeepers?* on page 11. Further proof that functional immunity can never be claimed for SEAs is that the UN has a standing Zero Tolerance Policy which strictly regulates the actions of Peacekeepers in terms of sexual conduct. In the interview, Professor Mintz did, however, mention that the SGB related to this policy could have been clearer and, perhaps, the loopholes it creates are partly the reason why there is great inconsistency in punishment (Mintz, Personal Communication, 2016). Perhaps the biggest inconsistency has been mentioned in the

literature review by Siekmann (1991) who evinced that military personnel is tried in their country of nationality. This gives origin to different punishments due to the different sets of laws and regulations established by the martial courts and penal systems.

Scholars have argued that the solution to the immunity from the host states' jurisdiction could reside in the establishment of universal jurisdiction for this sort of crime. Universal jurisdiction has been defined to entail:

> *"The ability of the prosecutor […] of any state to investigate or prosecute persons for crimes committed outside the State's territory which are not linked to that state by the nationality of the suspect or the victim or by harm to the state's own national interests" (Special Rapporteur - Galicki, 2006)*

The application of universal jurisdiction would, therefore, allow any given State to try the alleged perpetrators in their domestic systems. However, this thesis outlines the high improbability that this measure could come into effect under the present conditions. There are several reasons why this could be. First and foremost, as outlined by Sweetser (2008), international criminal law has not undertaken rape and sexual abuse by Peacekeepers under its umbrella of laws. Secondly, these acts are also not part of *jus cogens* – or all those norms "in the suppression of which [countries are] called upon to cooperate" bindingly (Jennings & Watts, 2008, p. 7-8). In first instance, *Jus Cogens* norms would allow for rape and sexual violence to be included in the meaning of torture. Nevertheless, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 describes torture as an act imposed in an official capacity and/or with the authorisation and approval of an official (UN General Assembly, 1984). Contrary to this definition, most abuses in Peacekeeping Operations are done as independent acts and with personal motives (Sweetser, 2008).

In second instance, an interesting discussion surrounds Sexual Exploitation and Abuse to be considered Crimes Against Humanity (CAH) and their appearance before the International Criminal Court in The Hague. As Professor Spagnolo pointed out in the second question of the interview, the issue of the matter is that CAH need to constitute "widespread and systematic attack against a civilian population" and that, in his opinion, is highly complicated (Spagnolo, Personal Communication, 2016). Sweetser (2008) outlines that the ICTY definition of Crimes Against Humanity is slightly broader and, following the *Tadic case,* the Prosecutor settled that it was sufficient to establish a connection with an armed conflict for the crime to exist. Sweetser (2008) is nevertheless reluctant that such connection could exist due to the post-conflict setting of PKOs. However, professor Spagnolo is more optimistic and goes as far as to suggest in the follow-up query to question two of the interview that Peacekeeping Forces find themselves to be forced to use their weapons – which could be argued to constitute an armed conflict situation (Spagnolo, Personal Communication, 2016).

Furthermore, he continues by saying that some PKOs, such as the MONUSCO mission, are even established under Chapter VII of the UN Charter, which could mean that rape and sexual violence could perhaps not be considered Crimes Against Humanity but rather as War Crimes (Spagnolo, Personal Communication, 2016). Nevertheless, when discussing the probability that a Peacekeeper could be brought before the International Criminal Court, professor Spagnolo is not as optimistic. He argued that the UN Security Council, acting under Chapter VII, is not likely to refer the case to the Court, and that even in the case this would happen, the UNSC Resolution 1422 of 2002 "granted immunity to all those UN Peacekeepers from non-party states to the Rome Statute" (Spagnolo, Personal Communication, 2016). Contrary to the UNSC referral, he is more positive when discussing the Prosecutor option to start a case *Proprio Motu*. Professor Spagnolo explained that, while many fear the politicisation of the Prosecutor, such cases might be the ideal instance in which a more politicised Prosecutor could make a difference (Spagnolo, Personal Communication, 2016).

In summary, the International Criminal Court will most definitely not have jurisdiction, and certainly will not claim it, in the near future. The same unlikelihood exists that these crimes at the hands of Peacekeepers will be recognised as peremptory norms of *jus cogens*. This leaves the two aforementioned options that will be discussed hereunder.

5.2.1 Independent System of Special Courts

According to Professor Mintz, the UN argues that prosecutions for Peacekeepers in the host states would solely constitute a burden on these countries which are often considered "failed states" with an unreliable judicial system (Mintz, Personal Communication, 2016). Although she is sceptical about this broad determination that the United Nations makes, it is this assumption that sparked the need for the first solution.

The first solution is outlined by the Code Blue Campaign, part of the NGO AIDS-Free World, and has been officially launched in October 2016. What the Campaign has outlined is what ultimately would constitute a System of Special Courts independent from the activities of the United Nations. Their proposal looks to accomplish that each Mission would "ensure impartial justice for everyone involved in or affected by cases of sexual offenses by UN Peacekeeping personnel" (Code Blue Campaign, 2016, p. 1). The brief report mentioned that these courts would be fully independent from the UN and concentrate all their resources to providing accountability for the perpetrators of SEA-related offences employed by the United Nations (Code Blue Campaign, 2016). Another key point mentioned in the interview by professor Mintz, is the harmonisation of the Zero Tolerance Policy. In fact, an issue reported by many scholars, and the Campaign itself, is the incongruous nature of the punishment of the perpetrators and remedy to the victims due to the diverse interpretations of the Policy (Mintz, Personal Communication, 2016). Therefore, with the creation of a common system

of courts, this issue could be overcome and a uniform solution to all violations of a SEA character could be established.

In their proposal, the Code Blue campaign starts their critique of the United Nations Peacekeeping system by addressing the heavy failure of their investigative powers. The Group of UN-appointed Legal Experts for the evaluation of the Peacekeeping system has been highly critical of the Organisation's response to SEAs accusations by calling it a "gross institutional failure" (Bowcott, 2015). The Campaign stated that the misuse of investigatory powers "breeds a culture of silence and is sustained by a culture of impunity" (Code Blue Campaign, 2016, p. 1). The Campaign is not alone in sustaining this theory. Many scholars reviewed in the literature review and more have been claiming for years that there are far more procedural requirements than necessary, a spread of amateurism and a strong conflict of interests within the UN activities. The first issue, deriving from the many procedural requirements, is the increasing backlog of cases to be investigated by the OIOS (Defeis, 2008). The second issue, deriving from the spread of amateurism, is, among others, the functions of Peacekeepers as Legal Advisors for alleged perpetrators and victims alike (Code Blue Campaign, 2016). Furthermore, this issue increases relevance when investigators are reportedly members of the Missions dealing with cases involving their colleagues (Code Blue Campaign, 2016). The third issue is the extremely dangerous conflict of interest within the United Nations which is mandated to protect the civilian population through the Mission, but also protect its personnel (Mintz, Personal Communication, 2016). Lastly, professor Mintz argues that, while the Zero Tolerance Policy was certainly a step in the right direction, it was only an administrative policy. What the UN should have done but did not do was the constitution of a credible, independent criminal justice mechanism to follow up on the breaches of the Policy (Mintz, Personal Communication, 2016). To the effect of improving in this area, the Code Blue Campaign is proposing that the Independent System of Special Courts would receive the reports of allegations and referral of cases that are not of the competence of TCCs or the UN.

Following Prince Zeid's recommendations, which targeted the provision of mechanisms to lodge individual complaints against UN personnel, professor Mintz argued that a system of special courts is the right solution. In fact, in the interview, professor Mintz stated that, although the UN has theoretically in place a reporting system, it is not safe for the victims of abuses (Mintz, Personal Communication, 2016). The reasons for the lack of safety are several but the main ones mentioned by professor Mintz are the possibility that victims and perpetrators meet in the reporting structures and that UN management of the reporting mechanism, as previously mentioned, results in a high conflict of interests (Mintz, Personal Communication, 2016). Also mentioned by professor Mintz is the protection that is currently lacking for the accused which could be solved through the independent courts system. Mintz is not alone in mentioning that the authorities within different Operations have

been conducting so-called "show-trials" on low-ranked soldiers for the sake of proving that there is a system of accountability (Sweetser, 2008; Defeis, 2008). This cannot be considered justice which is why the Campaign is proposing that the independent courts will be structured as to grant a commonly agreed system of investigations, trials and punishments consistent across Operations (Code Blue Campaign, 2016).

The Zeid Report also recommended that the Operations focused on community outreach. Though scholars have interpreted this outreach in different manners, the Campaign does provide a fairly complete structure to grant judicial and alternative remedy to the victims of SEAs. The former will be given thanks to the criminal accountability granted by the system of independent courts. According to the Campaign, the Member States will grant "full legal authority to investigate and try UN non-military personnel accused of sexual offenses, as well as soldiers sent by troop-contributing countries that cannot or do not respond when allegations are referred" (Code Blue Campaign, 2016, p. 2). Again, these trials will be conducted in a common standard agreed by Member States. This system would function as a deterrent for possible perpetrators, as a judicial remedy for the victims, and as an encouragement to report for other Peacekeepers under the influence of the "culture of silence" (Code Blue Campaign, 2016). An important aspect mentioned by professor Mintz is the proximity of the courts to the victims. A highly debate issue of international tribunals such as the International Criminal Court in The Hague and the like has been the distance between the Courts and the place where the crime(s) was committed (Schwöbel-Patel, 2016). This gap, according to professor Mintz, could be closed by instituting the Courts in the country where the Mission is taking place to grant the victims to be provided with feedback and not let them feel forgotten (Mintz, Personal Communication, 2016).

For what concerns alternative remedy, the Campaign has also proposed a Tribunal for Victims of Sexual Exploitation and Abuse (Mintz, Personal Communication, 2016). This initiative, according to professor Mintz, would enable the victims of abuses to share their experiences with a panel of experts who will provide both the necessary moral support to the victims and the much needed amplification of these stories to the Member States (Mintz, Personal Communication, 2016). Professor Mintz explained that despite the UN's discourse of a "victim-centred approach", rarely there have been projects that truly captured the will of the victims (Mintz, Personal Communication, 2016). The initiative is planned to take place in several peacekeeping countries with an eventual tribunal, with representatives from various countries, planned to address the UN Security Council.

5.2.2 U.N. Compensation Mechanism

The UN established in the SOFA-model the provision of standing claims commissions. These commissions, however, have reportedly never been opened (Rashkow, 2014). Sweetser (2008)

argued that, although these commission – together with the claim review boards, should be revised, they would still be insufficient. That is because, among other reasons, as mentioned before the victims of SEAs would still be subject to a UN-controlled investigation oftentimes executed by the perpetrators' colleagues. Sweetser (2008) also deemed insufficient the suggestions offered by the Group of Legal Experts appointed by the UN in 2006. This strict analysis on Sweetser's part comes from the conscious decision to outline a plan that maintained the UN organisational immunity and, at the same time, ensured that victims are granted a remedy. This plan, according to Sweetser, is to establish a "UN-administered Compensation Mechanism" (Sweetser, 2008, p. 1646).

Although the UN has tried over the years to re-establish its international credibility post-scandals, there has never been a step in the creation of a systematic mechanism of compensation for the victims of Sexual Exploitation and Abuse at the hands of UN Peacekeepers. In her study, Sweetser (2008) claims that the United Nations must instead ensure compensation on the grounds of employer liability and modern standards of administrative remedies by international organisations. This thesis argues further that the organisational immunity from criminal prosecution of the United Nations does not preclude the administrative employer liability to compensate victims as happens for all organisations. In fact, she argues that the presence of criminal accountability – provided for in the previous Section – is indispensable but compensation should also be part of the equation (Sweetser, 2008). The United Nations would claim that the Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse in host countries already refers victims to psychological and medical assistance. Sweetser (2008) argues that, although this is a positive step, it is insufficient.

The proposal outlined in Sweetser's study provides for "A centralised, standing claims mechanism […] that would not need to be reconvened and would be easier for individuals to access" (Sweetser, 2008, p. 1664).

Pallis (2005) outlined that the United Nations High Commissioner for Refugees (UNHCR) created a similar structure of territorial claim mechanism to help refugees report their abuses. Although he finds some criticisms in the effective access that refugees have to the mechanism and the knowledge of and confidence in the system, he did notice that the numbers of reports drastically increased, so much so that the UNHCR requested extra funding (Pallins, 2005).

Sweetser (2008) suggests that this mechanism should have a representative from the country of origin of the Peacekeeper and one from the host country, or the country of the victim. This would create a balance between the familiarity of the first representative with the system used by the Peacekeeper in its nation and the knowledge of the second representative of the customs, norms and laws pertaining to the host country.

An important question that has been raised time and time again is that of funding. Sweetster (2008) argues that the compensation mechanism should be funded by the Department of Peacekeeping Operations. This thesis claims the same with the reasoning that the Department itself, by being financially responsible for the mechanism, would perhaps be compelled to contain the costs by improving the training of Peacekeepers in the avoidance of SEA-type crimes and encourage further the reporting of such crimes by fellow Peacekeepers. Currently, the issue at hand is not the lack of funding, rather the misgiving of such funds. The two funds made available by the United Nations are the UN Voluntary Fund for Victims of Torture (UN General Assembly, 1981) and the UN Voluntary Fund on Contemporary Forms of Slavery (UN General Assembly, 1991). These funds, however, do not provide direct compensation to the victims, rather to the non-governmental organisations that apply on their behalf (Sweetser, 2008). According to Sweetser (2008) this is the reason why their budgets are quite small, whereas indpendent projects targeted directly at the victims are more funded by privates. On the other hand, she argues that a claim mechanism would encouter higher political approval, and consequently more public funding, because governments will not feel threatened of exposure as individuals will be the ones brought to accountability (Sweetser, 2008).

5.3 SUMMARY

The conclusion to this Chapter is of high relevance as it is the basis for answering the main research question of this dissertation. The first Section discussed the intricacies of the conflicts of jurisdiction and the lack of accountability for the individual perpetrators due to their immunities. Two conclusions were set to move onto the second Section. On the one hand, it was highlighted that the Peacekeepers' functional immunity can never subsist for acts of Sexual Exploitation and Abuse. On the other hand, the thesis drew back to the *Mothers of Srebrenica* decision by the European Court of Human Rights which established that the UN could eventually lose its organisational immunity if it will continue to not grant alternative remedies to the victims.

The second Section also looked at the possible jurisdiction of the International Criminal Court for cases of SEA involving UN Peacekeepers which was dismissed as a solution. The two solutions that were deemed feasible were (i) an Independent System of Special Courts and (ii) a U.N. Compensation Mechanism. These solutions refer to two existing proposals but are discussed in this dissertation by adding or modifying certain provisions with the help of the literature review.

The first solution, in summary, calls for the creation of a system of special courts independent from the UN and its jurisdiction to investigate, try, detain and punish the perpetrators of, specifically, SEA-type crimes. The independency of these courts will prevent the UN from incurring in conflicts of interests. Each court will be established in the proximities of the Missions which will provide the victims a sense of closure as well as an easier access to feedback. These courts will be also beneficial

to the perpetrators who will be granted commonly and internationally agreed rights and standards pre- and post-trial and will not risk to fall victims of the so-called "show trials".

The second solution established a UN Compensation mechanism for the redress of the victims of SEAs which are often left to their own means. This mechanism, funded by the Department of Peacekeeping will serve as the administrative remedy requested, among others, by the European Court of Human Rights. It can also be assumed that, by bearing the responsibility to fund the mechanism, the DPKO will further develop its agenda to eradicate sexual violence and encourage further the report of SEA-type crimes among the Peacekeepers.

6. CONCLUSION

As mentioned in the introduction, the issue of SEA-type crimes in UN Peacekeeping Operations is one of extremely high relevance and urgency but of rather low discussion. Indeed, the methodology highlighted the difficulty of finding sources that dealt with the issue in depth. This thesis' scope was further difficult to research as academic research primarily focuses on the critic of SEAs at the hands of Peacekeepers rather than finding applicable solutions. As mentioned on various occasions in this dissertation, the most common solution debated in the scholarly world is that of adding women to Peacekeeping Operations which was, however, deemed insufficient by this thesis.

This dissertation surveyed a number of aspects. First, the DPKO was discussed and a thorough presentation of the Peacekeepers and the UN legal framework was given. In this Chapter, named "Who are the Peacekeepers?", the related sub-question was answered, namely "*What is the structure and legal framework of the DPKO, especially with regards to tackling SEAs?*". This question, although necessary to understand the background of Peacekeeping Operations, provided limited resources to answering the main research question. If a step towards the scope of the dissertation was made, it was that of the launch of the Zero Tolerance Policy in October 2003. Indeed, though the Policy lacked solid provisions of accountability, it began a discussion on the grave issue of SEAs and established a UN administrative framework on the topic.

Secondly, the literature review helped to answer in full or in part other sub-questions. In order, the first sub-question concerned the *nature of the accusations against UN Peacekeepers and evidence of Sexual Exploitation and Abuse*. The answer to this sub-question could be found in the Section "History of SEAs". Although the Section's research was of an exploratory kind, it was essential to highlight the intricate nature and the complex consequences of each SEA onto the image of the Operations, the reputation of the UN, but also – and especially – onto the causes that are supported by the Organisation. Through the brief review on the MONUC/MONUSCO case, this Section also provided evidence that, despite the UN's best efforts, the current prevention system is faulty and is in need for drastic change.

The second Section of the literature review presented the first main issue to a breakthrough on the topic. In fact, this Section provided a commentary to the immunities enjoyed by the diverse branches of the Peacekeeping personnel and the UN itself. Through a more thorough analysis in the Results Section on Private Law Character, Organisational Immunity and Functional Immunity the bigger picture of the issue becomes clear. In order, military personnel are, on paper, those who are the least protected by the immunities system and the branch most easily held to accountability. Indeed, military personnel enjoy functional immunity as for all other branches, however, differently from the others their employer is not the United Nations. In fact, UN military is still under the ultimate

command of their TCC which, therefore, has judicial responsibility over them. Consequently, at least in theory, if the martial laws of the TCC forbid SEA-type crimes in their codes – as it often is, military personnel can be criminally prosecuted. As mentioned before, this is a discussion valid on paper, however, it was observed that in reality, the situation is much different.

The branch which in theory and in reality is the hardest to hold to accountability is the civilian branch. This branch enjoys functional immunity from prosecution in the host state and at the same time, the UN is its employer. The former is the point in which the situation becomes truly complex. Because of the way in which the DPKO was established, the UN is only responsible for regulating the Forces from an administrative standpoint. Even with the introduction of the Zero Tolerance Policy, the UN limited its reach to a purely administrative policy rather than including judicial provisions as well. This ultimately means that the United Nations' powers only extend to its investigatory and/or administrative capacity. A further complication to the achievement of justice, or at least compensation for the torts suffered, derives from the UN's organisational immunity. In fact, in the literature review, it was explained that the UN reserves the responsibility to compensate only the victims of crimes of a "private law character". Until today, SEAs have not been deemed as such by the UN and therefore no compensation mechanism under the provision of employer liability has been put in place.

The fourth sub-question concerned the *current approach of the United Nations to the provision of alternative remedies to the victims of Sexual Exploitation and Abuse in Peacekeeping Operations*. This topic was reviewed in Section 4.3 of the Literature Review "SEAs and Effective Remedy for Victims". This Section was useful to understand the severe lack of a systematic and uniform structure applicable to all SEA cases. Indeed, while in general effective remedy is not provided, scholars argued that the few instances in which it has been granted were distinct one from the other. Several types of effective remedy were considered, such as TCC responsibility, a protection mechanism, appeal to national courts, and diplomatic protection. However, there was not a strong conviction in the academic world that any of these remedies could realistically be implemented. Nevertheless, the first paragraphs presented the possibility for the victims to obtain a form of compensation, which is the solution that this dissertation ultimately chose to analyse.

The main research question aimed at solving the dilemma of increasing accountability for the perpetrators and providing a remedy to the victims. To answer the research question we must draw back to the provision of immunity. This dissertation argues that, although functional immunity for Peacekeeping personnel must be maintained, Sexual Exploitation and Abuse can never be deemed to fall under said immunity. That is because sexual violence and other forms of abuse or exploitation can never be used to advance the Operations of the Peacekeeping Forces. Therefore, SEA is never part of a Peacekeepers' operational function. Furthermore, the present thesis argues that SEAs, as

actions inflicted and leading to damages to the individual, do constitute crimes of a private law character. Accordingly, following the provisions established by Section 29 of the Convention on Privileges and Immunities, the UN must provide an alternative remedy to the victims in order to keep their organisational immunity.

Once these two principles are established, the main research question can be answered.

The first solution presented by this dissertation, as suggested by the Code Blue Campaign, is the institution of an Independent System of Special Courts to be established in each Peacekeeping Mission. The independency of the courts will grant each alleged perpetrator to be tried according to commonly agreed standards regardless of the country in which he or she committed the crime. The same independence will lift the United Nations from the risk of incurring into a conflict of interests in the simultaneous protection of the local populations and the Peacekeepers. Furthermore, the Courts will provide for a greater accountability to the victims who will be able to check the process of the investigations, trials, and sentencing phase in the proximity of their homes. Lastly, with the institution of Tribunals for Victims of Sexual Exploitation and Abuse, victims will be provided with different sorts of remedies by the Courts themselves, such as medical and psychological assistance.

The second solution presented by this dissertation regards the employer liability of the UN to grant alternative remedy. As suggested by Sweetser (2008), a UN systematic mechanism of compensation will be instituted to grant pecuniary reparation to the victims of SEAs. The mechanism will be funded by the Department of Peacekeeping Operations which will assumingly be further pressured into promoting a culture of SEA-avoidance in the Operations and increase the reports.

This dissertation, ultimately, aimed at attributing to the United Nations the liability of employer which must grant an administrative remedy, to the Peacekeepers accused of SEA the due accountability to their actions, and to the victims of SEAs the fulfilled right to judicial and/or alternative remedy.

As a light of hope, the newly elected UN Secretary-General Antonio Guterres, made this remark in front of the UN General Assembly on December 12, 2016:

> *"The United Nations system has not yet done enough to prevent and respond to the appalling crimes of sexual violence and exploitation committed under the UN flag against those we are supposed to protect. I will work closely with Member States on structural, legal and operational measures to make the Zero-Tolerance Policy for which Secretary-General Ban Ki-moon has fought so hard a reality. We must ensure transparency and accountability and offer protection and effective remedies to the victims" (United Nations, 2016).*

This affirmation and the close work of the Code Blue Campaign, among others, with the United Nations in the achievement of the aforementioned goal, make for a positive perspective on the relatively near resolution of the issue.

As mentioned in the introduction, the research question was relevant to the issue of respect and protection of Human Rights by those deployed to promote and defend them. This dissertation concluded that the primary solution to enforce and expand this protection is by holding those responsible of SEA accountable to their actions. Though apparently foregone as a solution, it was outlined throughout the thesis how this accountability would be revolutionary in a system that has seen so many perpetrators go unpunished. The lack of accountability has provoked a spread of distrust in the Peacekeeping authorities, undermining the work of the many men and women who instead do the aforementioned work of protection and defence ethically. For this reason, accountability must go hand in hand with a process of redress of the victims, which was coincidently the second solution.

In conclusion, the UN must take action to grant that the Peacekeeping work continues to be well-accepted by the populations it serves by truly spreading the values and Human Rights entrenched in the Universal Declaration of Human Rights, by punishing those who abuse them, and by redressing their victims.

7. RECOMMENDATIONS

This dissertation does not claim to provide an exhaustive solution to Sexual Exploitation and Abuse in Peacekeeping Operations. In this Chapter, the dissertation provides two examples of topics which would need further research in order to make this thesis more compelling and exhaustive.

First and foremost, further research needs to be conducted in the sphere of victims support and UN or DPKO assistance. The shortcomings of not having these two spheres represented in this paper are several. On the one hand, though the solutions presented beforehand tried to take a victim-centred approach, it is imperative that victims, and NGOs working closely with them, be consulted more in depth to understand what their needs and wishes are. On the other hand, the United Nations and the Department of Peacekeeping Operations should be consulted for a deeper study on the feasibility of the Compensation Mechanism.

Secondly, a large part of the knowledge the world has on SEA derives from the bravery of whistle-blowers. Although they were not mentioned in this dissertation, their contribution to the work on defeating SEAs has been and still is, indispensable. They would be also as indispensable to the success of the aforementioned solutions as they continue to be the small percentage of personnel who reports SEAs and therefore who could start the process to settle the Special Courts. However, they are often unrecognised or worse prosecuted. An example of this injustice is that of Anders Kompass, a senior UN Aid Worker who was suspended and then dismissed for having denounced abuses of children by French troops in the Central African Republic (Laville, 2015). The UN whistle-blowers should be protected by several provisions, including the SGB on "Protection against retaliation for reporting misconduct and for cooperating with duly authorised audits or investigations" and the Ethics Office established in 2005 (UN Secretariat, 2005). However, the Government Accountability Project argued that for 11 years the UN has consistently criminalised whistle-blowers, such as Kompass (Edwards, 2016). This cannot be the rule if the Organisation claims to want to close the loophole on Sexual Exploitation and Abuse in Peacekeeping Operations. Therefore, it is imperative that further research be conducted on measures to protect whistle-blowers from external retaliation as well as that of the United Nations.

8. BIBLIOGRAPHY

Askin, K. D. (1997). *War Crimes Against Women: Prosecution in International War Crimes Tribunals.* The Hague: M. Nijhoff.

Betts Fetherson, A. (1998). Voices from War Zones: Implications for Training. In E. Moxon-Browne, *Future for Peacekeeping* (pp. 158-175). Basingstoke: Macmillan.

Bowcott, O. (2015, December 17). UN accused of 'gross failure' over alleged sexual abuse by French troops. *The Guardian*. Retrieved December 27, 2016, from https://www.theguardian.com/world/2015/dec/17/un-gross-failure-sexual-abuse-french-troops-central-african-republic

Brow University Library. (n.d.). Glossary of Research Terms. Retrieved December 28, 2016, from http://libguides.brown.edu/c.php?g=294022&p=1957677

Brownmiller, S. (1975). *Against Our Will: Man, Women and Rape.* New York: Simon and Schuster.

Casolari, F. (2009, January 9). Le operazioni di peacekeeping: tra protezione e rispetto dei diritti dell'uomo. *StoricaMente: Laboratorio di Storia*, *4*(18).

Cellamare, G. (1999). *Le Operazioni di Peacekeeping Multifunzionali.* Torino: Giappichelli Editore.

Clayton, J., & Bone, J. (2004, December 23). Sex scandal in Congo threatens to engulf UN's peacekeepers. *Times Online, UK*. Retrieved November 20, 2016, from http://www.timesonline.co.uk/article/0,,3-1413501,00.html

Code Blue Campaign. (2016). *A Practical Plan to End Impunity for Peacekeeper Sexual Abuse.* Retrieved December 10, 2016, from https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/57ffbe6d414fb54338530336/1476378221800/Code+Blue+-+3+pager+-+FINAL.pdf

Creswell, J. W. (2014). *Research Design: Qualitative, Quantitative and Mixed Method Approaches.* Thousand Oaks, CA: Sage Publications.

Csáky, C. (2008). *No One to Turn To: The Under-reporting of Child Sexual Exploitation and Abuse by Aid.* United Kingdom: Save the Children.

Dahrendorf, N. (2006). *Sexual Exploitation and Abuse: Lessons Learned Study. Addressing Sexual Exploitation and Abuse in MONUC.* DPKO, Best Practices Unit. Retrieved October 15, 2016, from http://www.operationspaix.net/DATA/DOCUMENT/6290~v~Sexual_Exploitation_and_Abuse__Lessons_Learned_Study.pdf

Dallaire, R. (2004). *Shake Hands with the Devil.* London: Arrow.

Defeis, E. (2008). U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity. *Washington University Global Studies Law Review, 7*(2), 185-212.

Department of Peacekeeping Operations. (1997). *Ten Rules: Code of Personal Conduct for Blue Helmets.* Retrieved November 20, 2016, from http://www.un.org/en/peacekeeping/documents/ten_in.pdf

Department of Peacekeeping Operations. (2000). *Mainstreaming a Gender Perspective in Multidimensional Peace Operation.* Retrieved November 20, 2016, from

http://www.peacewomen.org/assets/file/Resources/UN/dpko_mainstreaminggenderperspective_2000.pdf

Department of Peacekeeping Operations. (2001, October). *Gender and Peacekeeping Operations In-Mission Training.* Training and Evaluation Service, DPKO Military Division . Retrieved November 20, 2016, from https://www.un.org/ruleoflaw/files/DPKO,%20Gender%20and%20PKO%20In-Mission%20Training,%202001.pdf

Department of Peacekeeping Operations. (2002). *Gender and Peacekeeping Operations - Generic Training.* Training and Evaluation Service. DPKO Military Division. Retrieved October 15, 2016, from https://www.un.org/ruleoflaw/files/GENDER_AND_PK_GENERIC_TRAINING.pdf

Department of Peacekeeping Operations. (2003). Directives for Disciplinary Matters Involving Civilian Police Officers and Military Observers. DPKO/CPD/DDCPO/2003/001 and DPKO/MD/03/00994. Retrieved November 20, 2016, from https://cdu.unlb.org/portals/0/pdffiles/policydocg.pdf

Department of Peacekeeping Operations. (2003). Directives for Disciplinary Matters Involving Military Members of National Contingents. DPKO/MD/03/00993. Retrieved November 20, 2016, from http://www.pseataskforce.org/uploads/tools/directivesfordisciplinarymattersinvolvingmilitarymembersofnationalcontingents_undpko_english.doc

Department of Peacekeeping Operations. (2016, August 31). *Peacekeeping Fact Sheet*. Retrieved November 20, 2016, from DPKO: http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml

Detraz, N. (2012). *International Security and Gender.* Cambridge: Polity Press.

Dixon, M. (2013). *International Law.* Oxford University Press.

Dorigo, S. (2002). Imputazione e responsabilità internazionale per l'attività delle forze di peacekeeping delle Nazioni Unite. *Rivista di Diritto Internazionale, 25*(4), 903-945.

Edwards, B. (2016, May 31). *How to End Sexual Abuse in UN Peacekeeping Missions.* Retrieved September 8, 2016, from Government Accountability Project: https://www.whistleblower.org/blog/031431-how-end-sexual-abuse-un-peacekeeping-missions

Francioni, F. (2008). Il diritto di accesso alla giustizia nel diritto internazionale generale. In F. Francioni, M. Gestri, N. Ronzitti, & T. Scovazzi, *Accesso alla giustizia dell'individuo nel diritto internazionale e dell'Unione Europea.* Siena: Giuffrè Editore.

Frerichs, R., Keim, P., Barrais, R., & Piarroux, R. (2012). Nepalese origin of cholera epidemic in Haiti. *Clinical Microbiology and Infection, 18*(6), E158-E163.

Gardiner, N. (2005, March 22). The U.N. Peacekeeping Scandal in the Congo: How Congress Should Respond. *The Heritage Foundation*. Retrieved November 20, 2016, from http://www.heritage.org/research/lecture/the-un-peacekeeping-scandal-in-the-congo-how-congress-should-respond

Gouriet v. Union of Post Office Workers (UK House of Lords 1978).

Grady, K. (2010). Sexual Exploitation and Abuse by UN Peacekeepers: A Threat to Impartiality. *International Peacekeeping, 17*(2), 215-228.

Harrington, A. R. (2005, November 11). Victims of Peace: Current Abuse Allegations Against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future. *ILSA Journal of International & Comparative Law, 12*(1), 125-152.

Henquet, T. (2012). Introductory Note to the Supreme Court of the Netherlands: Mothers of Srebrenica Association et al. v. The Netherlands. *American Society of International Law, 51*(6), 1322-1363.

Higate, P., & Henry, M. (2004). Engendering (In)security in Peace Support Operations. *SAGE Publications, 35*(4), 481–498.

Human Rights Watch. (2016, March 4). *UN: Stop Sexual Abuse by Peacekeepers.* Retrieved September 18, 2016, from Human Rights Watch: https://www.hrw.org/news/2016/03/04/un-stop-sexual-abuse-peacekeepers

Jennings, K. (2008). *Protecting Whom? Approaches to Sexual Exploitation and Abuse in UN Peacekeeping.* Oslo: Fafo.

Jennings, K. (2010). Unintended Consequences of Intimacy: Political Economies of Peacekeeping and Sex Tourism. *International Peacekeeping, 17*(2), 229-243.

Jennings, K. (2011, September). Women's Participation in UN Peacekeeping operations: Agents of Change or Stranded Symbols? *Norwegian Peacebuilding Resource Centre*. Retrieved September 15, 2016, from https://www.files.ethz.ch/isn/137505/Women%E2%80%99s%20participation%20in%20UN%20peacekeeping.pdf

Jennings, R., & Watts, A. (2008). *Oppenheim's International Law.*

Kanetake, M. (2012). The UN Zero Tolerance Policy's Whereabouts: On the Discordance Between Politics and Law on the Internal-External Divide. *Amsterdam Law Forum , 4*(4), 903-945.

Karim, S., & Beardsley, K. (2016, January). Explaining sexual exploitation and abuse in peacekeeping missions: The role of female peacekeepers and gender equality in contributing countries. *Journal of Peace Research, 53*(1), 100-115.

Kronsell, A. (2012). *Gender, Sex and the Postnational Defense.* New York: Oxford University Press.

Laville, S. (2015, April 29). UN aid worker suspended for leaking report on child abuse by French troops. *The Guardian*. Retrieved September 8, 2016, from https://www.theguardian.com/world/2015/apr/29/un-aid-worker-suspended-leaking-report-child-abuse-french-troops-car

Lopes, H. (2011, March 14). Militarized Masculinity in Peacekeeping Operations: An Obstacle to Gender Mainstreaming. Ottawa. Retrieved December 1, 2016, from http://peacebuild.ca/Lopes%20website%20ready.pdf

Lutz, C., Gutmann, M., & Brown, K. (2009, October 19). Conduct and Discipline in UN Peacekeeping Operations: Culture, Political Economy and Gender. *Watson Institute for International Studies: Brown University*. Retrieved November 20, 2016, from http://watsoninstitute.org/images_news/un_report_2009_10_19.pdf

Lynch, C. (2004, December 16). U.N. Peacekeeping More Assertive, Creating Risk for Civilians. *Washington Post*, p. 26. Retrieved September 18, 2016, from http://www.washingtonpost.com/wp-dyn/articles/A3145-2004Dec15.html

MacKinnon, C. A. (2000, November). Disputing Male Sovereignty: On United States v. Morrison. *Harvard Law Review, 114*(1).

Mazurana, D., Raven-Roberts, A., & Parpart, J. (2005). *Gender, Conflict, and Peacekeeping.* Lanham, MD: Rowman & Littlefield .

McLellan, E., MacQueen, K., & Neidig, J. (2003). Beyond the Qualitative Interview: Data Preparation and Transcription. *Field Methods, 15*(1), 63-84.

Mothers of Srebrenica et al v. State of The Netherlands and the United Nations, 10/04437 (Supreme Court of The Netherlands April 13, 2012).

Murphy, R. (2006, December 11). An Assessment of UN Efforts to Address Sexual Misconduct by Peacekeeping Personnel. *International Peacekeeping, 13*(4), 531-546.

Odello, M., & Burke, R. (2016). Between Immunity and Impunity: Peacekeeping and Sexual Abuse and Violence. *The International Journal of Human Rights, 20*(6), 839-853.

Oliver, D. G., Serovich, J. M., & Mason, T. L. (2005). Constraints and Oppurtunities with Interview Transcription: Towards Reflection in Qualitative Research. *Social Forces, 84*(2), 1273-1289.

OSCE Mission in Kosovo; UNMIK. (2000-2001). *A Review of the Criminal Justice System.* . Department of Human Rights and Rule of Law. Retrieved December 28, 2016, from http://www.osce.org/kosovo/13050?download=true

Otto, D. (2007). Making Sense of Zero Tolerance Policies in Peackeeping Sexual Economies. In V. Munro, & C. Stychin, *Sexuality and the Law: Feminist Engagements* (pp. 259-282). Abingdon: Routledge - Cavendish.

Pallins, M. (2005). The Operation of UNHCR's Accountability Mechanisms. *NYU Journal of International Law and Politics, 14*(23), 892-898.

Price, J. H., & Murnan, J. (2004). Research Limitations and the Necessity of Reporting Them. *American Journal of Health Education, 35*(2), 66-67.

Radin, M. J. (1993). Compensation and Commesurabilty. *Duke Law Journal, 43*(1), 56-86.

Rashkow, B. (2014, April 2). Remedies for Harm caused by UN Peacekeepers. *American Society for International Law*. Retrieved December 5, 2016, from https://www.asil.org/blogs/remedies-harm-caused-un-peacekeepers

Reinisch, A. (2001, October). Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions. *The American Journal of International Law, 95*(4), 851-872.

Reinisch, A. (2011). Privileges and Immunities. In J. Klabbers, & A. Wallendahl, *Research Handbook on the Law of International Organizations* (pp. 132-155). Cheltenham, UK: Edward Elgar.

Reinisch, A., & Weber, U. A. (2004). In the Shadow of Waite And Kennedy. The Jurisdictional Immunity of International Organizations, the Individual's Right of Access to the Courts and

Administrative Tribunals as Al alternatives Means of Dispute Settlement. *International Organizations Law Review, 1*, 59-110.

Rome Statute of the International Criminal Court. (2002, July 1).

Ronzitti, N. (1999). *Comando e Controllo nelle Forze di Pace e nelle Coalizioni Militari.* Rome: Franco Angeli Editore.

Schwöbel-Patel, C. (2016). Spectacle in international criminal law: the fundraising image of victimhood. *London Review of International Law, 4*(2), 247-274.

Shepherd, L. J. (2000, May 27). Power and Authority in the Production of United Nations Security Council Resolution 1325. (404, Ed.) *International Studies Quarterly, 52*(2), 383.

Shraga, D. (2000, April). UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage. *The American Journal of International Law, 94*(2), 406-412.

Siekmann, R. C. (1991). *National Contingents in the United Nations Peacekeeping Forces.* Dordrecht: M. Nijhoff.

Simic, O. (2010). Does the Presence of Women Really Matter? Towards Combating Male Sexual Violence in Peacekeeping Operations. *International Peacekeeping, 17*(2), 188-199.

Simic, O. (2012). *Regulation of Sexual Conduct in UN Peacekeeping Operations.* Heidelberg: Springer.

Sjoberg , L., & Gentry, C. G. (2007). *Mothers, Monsters, Whores: Women's Violence in Global Politics.* London/New York: Zed Books.

Sola, G. (2002, June). I compiti dei peacekeepers nelle missioni di mantenimento della pace. *Periodico Mensile dell'Archivio di Disarmo, 6*, pp. 1-6.

Spagnolo, A. (2013). Immunity of the United Nations In Case of Human Rights Violations Committed During Peacekeeping Operations and Remedies Available for the Victims. *Diritti Umani e Diritto Internazionale, 7*(3), 806-812.

Special Rapporteur - Galicki, Z. (2006, June 7). The Obligation to Extradite or Prosecute (Aut Dedere Aut Judicare). A/CN.4/571. Retrieved December 28, 2016, from http://legal.un.org/ilc/documentation/english/a_cn4_571.pdf

Starr, S. B. (2008). Rethinking "Effective Remedies": Remedial Deterrence in International Courts. *NYU Law Review, 83*(3), 698-702.

Stato Maggiore della Difesa. (1992). *Manuale Interforze per le Operazioni di Pace.* Rome.

Stichting Mothers of Srebrenica v. The Netherlands, 65542/12 (European Court of Human Rights June 11, 2013). Retrieved December 15, 2016, from http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-122255&filename=001-122255.pdf&TID=mvsfcutpwu.

Stiehm, J. H. (2001). Women, Peacekeeping and Peacemaking: Gender Balance and Mainstreaming. *International Peacekeeping, 8*(2), 39-48.

Stuart, G., Williams, P., & Bellamy, A. (2004). *Understanding Peacekeeping.* Cambridge, UK: Polity Press.

Sweetser, C. E. (2008). Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel. *NYU Law Review, 83*(5), 1643-1677.

Thomas, D., & Ralph, R. (1994). Rape in War: Challenging the Tradition of Impunity. *SAIS Review, 14*(1), 81-99.

Tschiband, S. A. (2009, June 10). From Protection to Predation: Assessing the Question of Sexual Exploitation and Abuse in UN Peacekeeping Operations.

UN Charter. (1945, June 26).

UN Conduct and Discipline Unit. (2016, October 31). Allegations for All Categories of Personnel Per Year (MONUC/MONUSCO) [Digital Image]. Retrieved November 20, 2016, from https://cdu.unlb.org/Statistics/AllegationsbyCategoryofPersonnelSexualExploitationandAbuse/AllegationsforAllCategoriesofPersonnelPerYearSexualExploitationandAbuse.aspx

UN Conduct and Discipline Unit. (2016, October 31). Allegations for All Categories of Personnel Per Year (Sexual Exploitation and Abuse) [Digital Image]. Retrieved November 20, 2016, from https://cdu.unlb.org/Statistics/AllegationsbyCategoryofPersonnelSexualExploitationandAbuse/AllegationsforAllCategoriesofPersonnelPerYearSexualExploitationandAbuse.aspx

UN General Assembly. (1946, February 13). Convention on the Privileges and Immunities of the United Nations. Retrieved September 18, 2016, from http://www.un.org/en/ethics/pdf/convention.pdf

UN General Assembly. (1981, December 16). United Nations Voluntary Fund for Victims of Torture. A/RES/36/151. Retrieved December 18, 2016, from http://www.un.org/documents/ga/res/36/a36r151.htm

UN General Assembly. (1984, December 10). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Res. 39/46. Retrieved December 28, 2016, from http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf

UN General Assembly. (1990, October 9). Model Status-of-Forces Agreement for Peace-keeping Operations. A/45/594. Retrieved October 15, 2016, from https://www.ilsa.org/jessup/jessup09/basicmats/UNsofa.pdf

UN General Assembly. (1991, December 17). United Nations Voluntary Trust Fund on Contemporary Forms of Slavery. A/RES/46/122. Retrieved December 17, 2016, from http://www.un.org/documents/ga/res/46/a46r122.htm

UN General Assembly. (1996, August 26). Promotion and Protection of the Rights of Children. Impact of Armed Conflict on Children. A/51/306. Retrieved November 20, 2016, from http://www.un.org/ga/search/view_doc.asp?symbol=A/51/306

UN General Assembly. (2002, October 4). Report of the Secretary General on the Activities of the Office of Internal Oversight Services. A/57/451. Retrieved October 15, 2016, from http://www.un.org/Depts/oios/reports/a57_451.pdf

UN General Assembly. (2005, March 24). A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations. A/59/710. Retrieved September 18, 2016, from https://cdu.unlb.org/Portals/0/Documents/KeyDoc5.pdf

UN General Assembly. (2005, January 5). Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of Congo. A/59/661. Retrieved November 20, 2016, from http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SE%20A%2059%20661.pdf

UN General Assembly. (2006, May 24). Report of the Secretary-General on Special Measures for Protection from Sexual Exploitation and Abuse. A/60/861. Retrieved November 20, 2016, from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/360/40/PDF/N0636040.pdf?OpenElement

UN General Assembly. (2006, March 22). Report of the Special Committee on Peacekeeping. Operations and its Working Group at the 2006 Substantive Session. A/60/19. Retrieved October 15, 2016, from http://www.un.org/womenwatch/ianwge/taskforces/wps/N0628026.pdf

UN General Assembly. (2007, April 5). Report of the Office of Internal Oversight Services on its investigation into allegations of sexual exploitation and abuse in the Ituri region (Bunia) in the United Nations Organization Mission in the Democratic Republic of the Congo. A/61/841. Retrieved November 20, 2016, from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/297/50/PDF/N0729750.pdf?OpenElement

UN General Assembly. (2007, June 12). Report of the Special Committee on Peacekeeping. Operations and its Working Group on the 2007 Resumed Session. A/61/19 (Part III). Retrieved October 15, 2016 , from https://cdu.unlb.org/portals/0/documents/keydoc8.pdf

UN General Assembly. (2008, March 7). United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel. A/RES/62/214. Retrieved November 23, 2016, from https://cdu.unlb.org/Portals/0/Documents/KeyDoc13.pdf

UN Office of Human Resources Management. (n.d.). Working Together: Putting Ethics to Work. Retrieved November 20, 2016, from http://www.un.org/en/ethics/pdf/WorkinTogetherGuide_en.pdf

UN Office of Internal Oversight Services. (2015, May 15). Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations. Retrieved December 3, 2016, from file:///C:/Users/Cecilia/Downloads/1434375935_1_IED_15_001.pdf

UN Office of the Special Adviser on Gender Issues and Advancement of Women. (2002). Gender Mainstreaming: an Overview. New York. Retrieved November 20, 2016, from http://www.un.org/womenwatch/osagi/pdf/e65237.pdf

UN Secretariat. (1994, September 7). Establishment of the Office of Internal Oversight Services. ST/SGB/273. Retrieved November 20, 2016, from https://oios.un.org/resources/2015/01/STSGB273.pdf

UN Secretariat. (1999, August 6). Observance by United Nations forces of international. ST/SGB/1999/13. Retrieved October 15, 2016, from http://www.un.org/ga/search/view_doc.asp?symbol=ST/SGB/1999/13

UN Secretariat. (2003, October 9). Special measures for protection from sexual exploitation and sexual abuse. ST/SGB/2003/13. Retrieved September 16, 2016, from https://oios.un.org/resources/2015/01/ST-SGB-2003-13.pdf

UN Secretariat. (2005, December 19). Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations. Retrieved September 8, 2016, from https://oios.un.org/resources/2015/01/ST-SGB-2005-21.pdf

UN Secretariat. (2011, January 1). Staff Rules and Staff Regulations of the United Nations. ST/SGB/2011/1. Retrieved November 20, 2016, from http://i.unu.edu/media/unu.edu/page/36916/United-Nations-Staff-Regulations-and-Rules-ST_SGB_2011.pdf

UN Security Council. (2000, October 31). Women, Peace and Security. S/RES/1325. Retrieved September 18, 2016, from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement

UNHCR and Save the Children UK. (2002). *Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea, and Sierra Leone.* Retrieved October 15, 2016, from https://www.savethechildren.org.uk/sites/default/files/docs/sexual_violence_and_exploitation_1.pdf

United Nations. (2006, February 26). Problem of Sexual Abuse by Peacekeepers Now Openly Recognized, Broad Strategy in Place to Address it, Security Council Told [Press Release]. Retrieved December 5, 2016, from http://www.un.org/press/en/2006/sc8649.doc.htm

United Nations. (2016, December 12). *United Nations Must Change as Global Challenges Surpass Its Ability to Respond, Secretary-General-designate Tells General Assembly while Taking Oath of Office. SG/2235-GA/11874.* Retrieved December 28, 2016, from UN Meetings Coverage and Press Releases: http://www.un.org/press/en/2016/sg2235.doc.htm

United Nations Emergency Force. (n.d.). *First United Nations Emergency Force (UNEF I) - Background.* Retrieved November 20, 2016, from UN News Center: http://www.un.org/en/peacekeeping/missions/past/unef1backgr2.html

Valenius, J. (2007). A Few Kind Women: Gender Essentialism and Nordic Peacekeeping Operations. *International Peacekeeping, 14*(4), 510-523.

Vayrynen, T. (2004). Gender and UN Peace Operations: The Confines of Modernity. *International Peacekeeping, 11*(1), 125-142.

Wax, E. (2005, March 21). Congo's Desperate "One-Dollar U.N. Girls". *Washington Post*, p. 1. Retrieved September 16, 2016, from http://www.washingtonpost.com/wp-dyn/articles/A52333-2005Mar20.html

Whitworth, S. (2004). *Men, Militarism and UN Peacekeeping.* Boulder, CO: Lynne Rienner.

Wickremasinghe, C., & Verdirame, G. (2001). Responsibility and Liability for Violations of Human Rights in the Course of UN Field Operations. In C. Scott, *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (pp. 465-490). Hart Publishing.

World Health Organization. (2002). *World Report on Violence and Health.* Geneva. Retrieved October 15, 2016, from http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf

Zwanenburg, M. (2008). UN Peace Operations: Between Independence and Accountability. *International Organization Law Review, 5*(1), 23-47.

9. APPENDICES

9.1 TRANSCRIPT INTERVIEW PROFESSOR ANDREA SPAGNOLO

1. *Briefly introduce yourself, please.*

   "My name is Andrea Spagnolo and I am a Research Fellow in International Law at the University of Turin. I hold a Ph.D. in International Law from the University of Milan and a Law Degree from the University of Turin. I am a tutor and lecturer at the LLM in International Crime & Justice jointly organized by UNICRI and the University of Turin. I am also an Associate Member of the International Institute of Humanitarian Law and a Member of the Editorial Committee of the review *Diritti umani e diritto internazionale* and of the review *European Papers*."

2. *Though UN Peacekeepers are formally employed by the UN, they are nationals of their respective TCCs. This fact brings to the forefront two main problems at the criminal prosecution stage:*
   a. *The possible conflict of jurisdiction by different states; and*
   b. *The exclusion of jurisdiction for the host state through an MOU and Statues of Forces Agreement (SOFA) between the UN, the Host State and the TCC.*

   Adding the persistent lack of criminal provisions in the national criminal codes, how could the issue of de facto impunity be overcome?

   "I believe that the SOFAs are not essential in this issue. They are standard agreements which are more useful to the host state but they are not indispensable to the achievement of justice. This is mainly for one reason: because they are *inter partes* agreements. The problem there is to understand, essentially, if these agreements could grant a right to the individual to act outside of the boundaries of the agreement itself. Generally, agreements outline the jurisdiction and establish what is under the jurisdiction of the host state and what is not. However, the SOFAs do not outline the sharing of jurisdiction between the UN and the TCCs, rather they establish who has to hold an individual peacekeeper or a PKO accountable in case of non-contractual responsibility. For instance, if the driver of a UN tank hits and kills someone – that is a case of non-contractual responsibility, the parties look at the SOFA to understand who needs to recompense whom. So it is an agreement that is looked at in the case of damages. It could be that the SOFA, being only a model, is contracted to include other provisions. An example can be the 1994 UNAMIR SOFA Model – of the Rwandan mission – which expressly mentioned Humanitarian and Human Rights Law. It was referred to the relations between locals and Peacekeepers so as to somehow include other kinds of non-contractual responsibility, rather than the typical example of an accident. Conclusively, SOFAs are agreements that only regulate elements of "low-jurisdiction" between the UN and the host state, and therefore are not really of any help to your question on the conflict of jurisdiction. Furthermore, Section 7 of the SOFA model opens the possibility to open in-mission commissions to gather and investigate claims of a "private law character". This is a big issue because the UN interpret this "private law character" in a very stringent manner, e.g. the example of the accident mentioned before. The UN, however, does not see this character to cover graver problems. Therefore, this is, in my opinion, the reason why I don't believe that the SOFAs are the right place to find a solution to the lack of accountability.

   On the other hand, you have the MOU which says that the disciplinary responsibility lies always in the TCCs' hands. Therefore, they could be designed as to include the issue of sexual crimes. However, we know that MOUs are the result of negotiations. Therefore,

though we could expect the UN to impose these issues to be included, this is unlikely to happen because the contribution of troops is voluntary.

Now, I am not saying that these two should not be studied just because the UN has not done so yet. In fact, I am not alone in thinking that the "private law character" should include the damages to the individual which would clearly encompass sexual violence."

3. *The definition of sexual violence under Article 77 (1) (g)-6 of the ICC Statute encompasses the majority of reported SEAs allegations. Furthermore, the definition of Crimes Against Humanity under the Rome Statute might also be fitting in some circumstances. However, for these allegations to be brought before the ICC or other international tribunals, the crimes should have been a "widespread and systematic attack against a civilian population". Unfortunately, as most research shows, the majority of cases go unreported for fear of retaliation and therefore it is highly improbable that these criteria be met. Could there ever be a chance to prove these allegations to the extent necessary for them to surpass national jurisdiction and be brought before the ICC?*

   "For this question, the main problem is the need to demonstrate that a PKO conducted a systematic attack against the civilian population. This is highly complicated and I personally do not see it happening. What it is more probable is the consideration of these crimes as war crimes. For those, we could find a foothold from the moment that Peacekeepers were to be considered as combatants."

   Follow up question: considering that most PKOs are held in a post-conflict situation, could that still be considered a war crime?

   "Yes, I would not worry too much about it because if the Peacekeeping Force finds itself in the situation of firing their weapons, one could argue that is an armed conflict and International Humanitarian Law could be applied. It is obvious that they are not initially there to fight, and that might be their defence. The only black-and-white case I can think of is the Congo, with the Enforcement Brigade in the MONUSCO mission, where they actually have a fighting mandate. I question if these Peacekeepers were they to be responsible for sexual abuse if this theory could stand. In comparison to the crimes against humanity, this could be less of a stretch, still very hard to conclude, but maybe less to prove."

4. *Some scholars have argued that the UN should be given the opportunity to sign the Rome Statute since PKOs are deployed under the UN flag and therefore respond to UN Command chains and rules. This, however, will most likely bring about conflicts of jurisdiction between TCCs, UN, and possible Host States.*
   a. *Should the UN be given prosecutorial capacity and forum? If yes, how could that be done? If no, what are other solutions to guarantee accountability?*
   b. *Could and should the UN be afforded the chance to sign and ratify the Rome Statute?*

   "There is a political motive behind why the UN has never – and probably never will, sign the Rome Statute. That is the admission that, at some point, the UN cold enter a war. Therefore, it would take away the value of the first part of the UN Charter were it is written that the UN have been created post-WWII to maintain peace globally. Furthermore, the adhesion to the Rome Statute for an international organisation is rather complicated as the Rome Statute foresees individual responsibility and it would be hard to pin out who are the individuals imputable in the United Nations. Again there is the need to determine whether the chain of command of PKOs is under the UN responsibility or that of a TCC."

5. *How likely is it that the Security Council, acting under Chapter VII of the UN Charter, referred a case of this kind to the ICC?*

   "This is a very good question, as I do not see – at least juridically, an impossibility in achieving this. In the case of another event of the like of the Congo in 1960, where the MONUC PKO manifestly opened fire in offence, or in the Somalian case, the UNSC could very well refer the situation to the ICC which in turn, even just in an *obiter dictum* could comment on the instance. Now you are asking "how likely it is…" and it is not likely – unless we were talking about an African conflict in which probably the Court and the UNSC would be interested."

   Follow-up question: In the case of the UNSC referring the case to the ICC, wouldn't it risk losing the support and consequently the troop's contribution of the referred country?

   "This is exactly the point and it actually already happened. In the case of *Behrami v. France* and *Saramati v. France, Norway and Germany* at the European Court of Human Rights, there was a strong feeling of the indictment of the both France and Germany, and their last (political) argument was that if the Court were to indict them, they would withdraw all Peacekeeping troops. The same happened with the US in Somalia and, furthermore, the UNSC Resolution 1422 of 2002 granted immunity to all those UN Peacekeepers from non-party states to the Rome Statute. This was done with high pressure from the US."

6. *How likely is it that the Prosecutor started a case if this kind Proprio Motu?*

   "Contrary to the previous question, this is more likely. I personally believe that the Prosecutor should be more political. This fiction of the independence and autonomy of the Court is turning into the biggest weakness of the Prosecutor. He should not be deferent to the UN, on the contrary, with a more political Prosecutor I believe that the likelihood of this happening could increase. Maybe it would not go through the Pre-Trial Chambers, but it would definitely make a statement. Therefore, while many think that a political Prosecutor could be dangerous, I believe that maybe this could strengthen the OTP."

7. *Immunity is the primary reason for which most allegations do not even see the beginning of an investigation and certainly why legal action is hardly ever taken. However, according to Art. 27 of the Rome Statute, before the ICC all official capacities, and therefore any immunity linked to it, would be irrelevant. Should this be an incentive for cases to be brought before the ICC? Should sexual violence allegations be grounds for a waiver of immunity? How else would you suggest to solve the issue of immunity standing in the way of justice?*

   "I believe that the question of immunity to international organisations – not individual immunity, should be analysed again. In The Hague, there have been cases concerning the immunity of the UN such as the case of the Mothers of Srebrenica. Now this case moved onto the European Court in Strasbourg and both in The Hague and in Strasbourg the Courts said that the UN enjoy immunity. However, this stance was taken only to the effect that the UN, or other international organisation, would grant an effective remedy for the victims. The UN are not currently following through with this and, therefore, I don't believe that the discourse of immunity to international organisations is a totem of truth because sooner or later a Court in the world will say that the UN needs to pay for their mistakes."

8. *There is very little academic research on the topic of effective remedy or any other form of reparation for victims of SEAs. Should victims be granted the right to an effective remedy? If so, how could this right be implemented and what forms of reparations would go alongside it?*

"Following the line of thought of your previous question, I believe that if the UN will not grant access to an effective remedy for the victims, then a Court, sooner or later will say that without it, there should not be immunity. Currently, the UN have bland agreements with the host states for the remedy to damages. However, the question here is "should this be a right of the individual or of the State?" My answer is that this is a right of the individual and, therefore, these forms of reparation are insufficient. There should be the possibility to access a Court and a jurisdictional remedy. This is the only way to follow through on the veto on sexual crimes. And sooner or later a Court will "get tired" of the UN's immunity and will condemn these acts like The Hague Courts did in the case of the Genocide of Srebrenica. Furthermore, the UN should also initiate other kinds of non-judicial effective remedy, such as the institution of psychological and medical help, to repair the damages done by the Peacekeepers."

9.2 TRANSCRIPT INTERVIEW PROFESSOR KAILA MINTZ

1. *Briefly introduce yourself, please.*

"Hello, my name is Kaila, I work as coordinator of the Code Blue Campaign and with AIDS-Free World since June 2014. At that time, we were just doing the preparatory work for the campaign, so it hadn't joined yet. So I joined at the preparatory stages when we were reaching out to experts. As far as my experience goes, I sort of had already worked with AIDS-Free World because I was a research assistant to Stephen Lewis, who is one of the co-directors, through my Masters' at Ryerson University in Toronto. In the past, however, I have worked for many years at the Canadian Foreign Service, now called Global Affairs Canada, where I was a policy advisor and many other things. There I worked on issues related to this, but not specifically concerning Peacekeepers sexual abuse, such as the UN and Humanitarian & Development Policy."

2. *Why did you shift to the topic of Peacekeeping and specifically sexual violence within Peacekeeping Operations?*

"Truly, I met Paula and Steven and I thought the work they were doing was excellent and important and I wanted to be part of the change they were trying to achieve. I started mainly to look at the root causes of the spreading of HIV/AIDS, sexual violence being a primary force in that. So the question came up of how do we address sexual violence? We looked deeply into how institutions deal with it, their role in stopping the spreading of the disease and how they try to end impunity for sexual violence. Even if we were not experts on Peacekeeping, we did have a long-standing knowledge of the UN. This was important as we are trying to tackle the issue at the highest level and the UN is, or should be, the world's golden standard."

3. *What are the effects of Sexual Exploitation and Abuse by Peacekeepers on the populations they are mandated to help?*

"Definitely, the loss of the reputation for the mission and the UN, in general, is a big issue."

4. *What has been the impact of the 2003 SGB and the ZTP both at the institutional and humanitarian level*?

"I think that the 2003 SGB is mixed. It obviously shows how this is an important issue for the UN, so much so that they needed to have a separate policy for it. Differently than other issues, there is not a bulletin on murder, there are directives that concern corruption, but really this is a policy that has been separated from all others which show the extent of the problem. I think one of the challenges and some scholars have written about this, is that it includes but exploitation

and abuse. From our perspective exploitation sometimes is a crime and sometimes is not. For instance, it includes transactional sex which sometimes is allowed by the host state or the TCC, but the bulletin makes it seem as this is a given that it is a crime. This makes it complicated when you start looking at it. In the feminist scholarship, there is the question of whether or not prostitution should be allowed or what is women's agency. This is particularly important when looking at the Peacekeeping economy which is rarely discussed by the UN when, indeed, it is very important to understanding these dynamics.

Another important issue is that the language of the SGB can be at times confusing. There are actions that are completely banned and there are parts that are discouraged. So consensual sexual relations with beneficiaries are discouraged: this is not black and white which is why we believe it creates a lot of confusion and it means that there might be different policies in place amongst TCCs, police units. For instance, one country can say "no fraternisation" is their policy, but that is also up to the Force Commander and the individual contingents Commanders. But that might also be different on a different mission and so if people are rotating around from different missions and they have different guidelines that might be a problem. So, of course, the SGB focused on awareness and it has done a fairly good job within this area, but it doesn't go far enough and it not clear enough and that's where a lot of the problems come in. That is also why now with the Special Coordinator, Jane Holl Lute, they have done a series of things like a glossary of all the different terms because each organisation has a different way of describing the issue and they are trying to connect and harmonise their policy. The issue is that it has been 13 years and they still aren't there. So this shows how little it has been effective."

Follow-up question: Do you think that the fact that this policy is so unclear in its scope is partly the reason why there is still so much impunity?

"Yes, I do. There is still rampant impunity and this I think is partly because it is a policy and it is not a system to really address the abuse from a criminal justice perspective. It is an administrative policy and not a criminal justice mechanism which is fine, but then it should have had a criminal justice mechanism that followed – especially with the immunities attributed to the personnel – and it didn't."

5. *When talking about immunities, what is the position on the Code Blue Campaign on the issue?*

"Well, we do see a difference among the different components. So first we have the military and they do not have full immunity. They have immunity from the jurisdiction of the host state but that is not full immunity. However, we focus on civilians and police. They indeed have only functional immunity and it doesn't apply in cases of sexual exploitation and abuse because sexual exploitation and abuse can never be part of your official functions. We have actually discussed it with the Office of Legal Affairs of the UN and they agree that there is no immunity because it just can never happen that they are part of your duties and that is precisely what functional immunity means. Now in practice, they treat it as though they have immunity because they don't automatically refer things. So what should happen is that if there a case of SEAs, it should be referred immediately to the host state, because when a crime happens in a country, that country has jurisdiction over the crime. That is not what happens in practice where instead the UN will do this lengthy administrative investigation and then at the very end of a very long process they'll refer it not to the host state but to the State of nationality or the TCC. We take issue with that UN control. The UN has responded to it by saying that they can't always trust the host state to provide the legal insurances that they have a rule of law, that the people that are accused will be treated with due process. Our response was "under what basis are you making that determination? Can you say that categorically that all countries are failed states and

they don't have rule of law, don't have those protections?" So when we first started our campaign we were saying that if there is no immunity, these cases should be turned over to the host state. However, during the discussions we understood that Member states are resisting having these cases turned over to the host states. That's where our new proposal for an independent system of special courts come in, to bridge that. If there is no immunity but they're not referring it to the host state, then our solution would act as a stop gap and then these courts would have the jurisdiction to try civilians who are accused."

Follow-up question: A major problem with the investigations that many scholars have written about is that TCCs are stopping the envoy of voluntary troops to Peacekeeping missions as soon as investigations again one of their nationals begin. This has happened with the US, France, the Netherlands and is made easy by the fact that troops are sent voluntarily. So how do we prevent states from withdrawing troops so easily?

"Though this is not what our campaign focuses on it is still interesting. Indeed, our campaign focuses on civilian and police which are also those who are accused of more SEAs crimes. However, the military perspective is also interesting. The UN is putting in place now new mechanisms to vet the troops that are being sent to the missions so as to check whether or not the members have been involved in SEA-type crimes, etcetera. Also, the UN could very well select more tightly their troops. There is this misconception that there is a lack of Peacekeepers where in fact this is not true, so the UN could award those countries against which there have not been allegations rather than "taking what it can get". However, we do believe that really the biggest problem and where there is the largest lack of accountability lies with non-military staff, and the UN does not truly see it or is not ready to admit it. The main difference here between military and non-military staff in terms of accountability is that while military staff works for the UN but is employed originally by their TCC, the volunteers are employed solely by the UN. As a Canadian, if I go and work for the UN, the Canadian government has no responsibility for me, so if I commit a crime abroad, Canada may not even know that I am in that country so it should be that the host state takes over, but if it doesn't have the capacity to do so there is this gap. Another thing that is often missed is that these civilians in missions do play a crucial role including with the military. They are often the ones who are doing the training, they are the ones who are enforcing the ZTP and so if there is no accountability for them, then what message does it send to the rest of the Peacekeeping mission, including the contingent commander and the military troops?"

6. *In terms of effective remedy, what can be done especially while there is not much criminal accountability?*

"Well, that is really the question! The victims are literally currently left alone as there is not a safe way for them to report. The UN will tell you that there are mechanisms in place and reporting centres which is true, but they are run by the Peacekeeping Operations themselves and, therefore, the UN. This is a real conflict of interest on the UN side and it can lead to all sorts of issues like the victim having to pass close to their perpetrator to go report the abuse when they are going to the base to report. Our report and proposal are for a totally separated and independent system so even in the reporting phase if there has been a crime, the victim could report it directly to the mechanism outside of the UN. That safeguards the victim but also the accused. There have been cases for instance where a TCC had been accused and then a couple of low-ranked soldiers were tried in the so-called "show-trials" and that is not really justice. We are therefore looking to have a standard that is consistent with countries and missions so both accused and accusers can have a place where crimes can be investigated fairly. So our philosophy is that if there is criminal accountability that will be a remedy big enough for

victims who will start reporting more and more and will be granted possibly other remedies such as psychological and physical ones.

Another very important measure that this new mechanism will try to implement is that trials will be conducted near the victims that will be provided feedback. Currently, the main issue is that trials happen far away from the victims in the TCCs and these victims are forgotten or don't receive any information on what is happening to their accused, so it is important to close the loop on this.

On our side we are also proposing a Tribunal for Victims of Sexual Exploitation and Abuse, which is going to be a series of establishments where victims will be able to share their stories before a panel of distinguished persons who will not be there to judge if the abuse happened or not, rather will provide support and amplify their experiences to UN member states, so they will bring their experiences and stories to be known. We are currently organising this to be in a few countries in which there have been reports of SEAs by Peacekeepers and then we will bring some of these witnesses to New York for an event in front of the Security Council. We feel that this is important because, despite the talk about a victim-centred approach, there is actually very little action that follows that message. Once in a while, there will be a documentary or a journalist that interviews the victim, but it is not as common as it should be. And most importantly, no one is asking them how they would like to see justice handled or how they would like to report. We have imposed our "western" system, but since they are mostly not western countries, maybe we should look at their perspectives and wishes."