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RIGHTS AND MIGRATION STUDIES

Master's Thesis

# Sexual Exploitation and Abuse by UN peacekeepers

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by

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## **Abstract**

Sexual exploitation and abuse (SEA) by UN peacekeepers is a chronic issue of the UN history. Peace operations are deployed in order to promote and protect human rights and establish the rule of law in post-conflict areas; however, over the past few years, allegations against peacekeepers have demonstrated that they harm local communities. UN policies and actions are not efficient, letting this issue affect more people in need. Definitions concerning sexual violence are not comprehensive, and overlooking the issue – especially in the first years of its appearance – only worsens the situation. Scholars have analyzed SEA and tried to understand the reasons behind it and the influence of masculinities on it; to categorize its types; as well as the impact that it has on individuals, local and international communities. Some of the few initiatives against SEA are the continuous development and qualitative training standards, the deployment of female peacekeepers and the promotion of gender equality, while in the past few years UN has introduced a victim-centered approach mechanism as well. Nevertheless, when the time comes for investigating and prosecuting perpetrators, there are some obstacles that should be overcome and a complex legal system, regarding the jurisdiction over peacekeepers that should be solved.

**Key Words:** Sexual exploitation and abuse, United Nations, peacekeeping, peace personnel, human rights, local communities, post-conflict areas

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## List of Abbreviations

CAR	Central African Republic
CSOs	Civil society organizations
DRC	Democartic Republic of Congo
EU	European Union
HIV	Human immunodeficiency virus
ICC	International Criminal Court
ITS	Integrated Training Service
LGBTI	Lesbian, gay, bisexual, transgender and intersex community
LoN	League of Nations
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MoU	Memorandum of Understanding
MSC	Military Staff Committee
NATO	North-Atlantic Organizations
NGOs	Non-governmental organizations
OHCHR	Office of the High Commissioner for Human Rights
OIOS	Office of Internal Oversight Services
ONUMOZ	United Nations Operation in Mozambique
SEA	Sexual exploitation and abuse
SG	Secretary-General
SOFA	Status of Forces Agreement
SRSg	Special Representative of the Secretary General
STI	Sexually transmitted infections
TCC	Troop-contributing country
UAR	United Arab Emirates
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNEF	First United Nations Emergency Force
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIBH	United Nations Mission in Bosnia Herzegovina
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
UNTAC	United Nations Ttransitional Authority in Cambodia
UNTAET	United Nations Transitional Administration in East Timor
UNTSO	United Nations Truce Supervision Organization
VRA	Victims' Rights Advocate

## **1. Introduction**

Sexual exploitation and abuse by peacekeepers is one of the issues that the UN should fight in order to protect local communities and ensure the effective outcome of peace operations. In general, they are deployed in order to promote and protect human rights and establish the rule of law. However, reports show that peacekeepers, instead of helping and supporting local people, do harm and are involved in sexual misconduct against them, causing more problems in post-conflict areas. This research is trying to analyze the phenomenon and investigate how this issue affects local communities, what the actions of the international community are in order to face it, and whether the victims get redress. Though SEA is an understudied issue with little bibliography and a small number of scholars that deal with it, information is gathered in order to understand why it is still happening. What does SEA mean? Has it been given due importance? Does the international community try to eliminate SEA? The research revolves around these questions, which the author will try to answer in the conclusion.

The research consists of two main parts: the theoretical background and the literature review. In the theoretical background, the author explains in detail what a peace operation is and how it is deployed, as well as its principles and the concept behind them. In general, peacekeeping operations are neutral military missions that require international support in order to achieve the transition from conflict to peace. They are inextricably linked to the international community as peace personnel come from the Member States of the UN. Most missions are conducted by the UN, but the SC may authorize other regional organizations or coalitions of countries to conduct missions under multilateral peace agreements. Each mission is unique and special; it has its own mandate, and apart from some norms they all share, they have nothing else in common. This actually demonstrates their complexity and unstable nature, as well as their ambiguity concerning the resources and the needs of the operation. Some of the standards they share are the prevention of a new outbreak of conflict, the stabilization of the situation after the ceasefire, the compromise of parties concerned in order to achieve a lasting peace agreement, the implementation of peace agreement and the creation of a stable environment for a democratic government. They are based on three principles, namely the consent of the parties, the impartiality and the non-use of force, except in self-defense or in defense of the mandate and always based on human rights norms and International Humanitarian Law.

In the next part, the history of the peace operations is also presented. The first official peace operation to be established, which continues to this day, is the operation UNTSO, which is deployed in order to create stability in the Middle East, monitor ceasefires, and prevent escalations. During the Cold War period, the need for establishing peace operations increased due to the fact that many conflicts broke out. Scholars have characterized these operations as modestly successful. The need for peacekeeping had increased during this period, which had created two main problems:

the need for uniformed personnel and their training programs and the increase in the budget needed. In the mid-1990s, three high-profile missions brought UN operations under criticism: UNPROFOR, UNOSOM II and UNAMIR. After the failures of these missions, it was clear that improvements in peace-building processes and humanitarian assistance are important. The presentation of the Brahimi Report undertook a review of peace operations and recommended improvements, which actually did not provide solutions due to the unstable and complex nature of each operation.

Another part of the theoretical background is the definitions provided by the UN concerning sexual violence. The definitions are commented on, and the author tries to understand if they are comprehensive and cover all possible instances of the issue, from abusive and exploitative behaviors to consensual relationships between peacekeepers and locals. However, even with the definitions provided and though in some cases there are missing parts, the UN seems to consider all instances of sexual intercourse in this context as unacceptable actions without thinking about the human agency and sentimental status of people in these areas, nor the needs of some peacekeepers or locals for relief and outlet from the situation.

The last part concerns the history of the SEA. The first official reports about SEA and the operations that took place are presented. Of course, these may not be the first reports concerning sexual violence because old reports may have been buried, but due to the publicity and the public outcry concerning the management of the UN, they were recorded. It is seen that the UN did not give the attention needed in the first place in order to reduce the issue and, in some cases, was willfully blind or took actions just to cover the problem superficially. In many cases, human rights and fundamental freedoms were infringed, and there was ‘victim blaming’ behavior in the handling of these cases. However, after some years, the UN decided to adopt the zero-tolerance policy, which till today has missing parts, especially concerning human agency and the self-determination of people.

The second part of the research is the literature review, which aims to explain the reasons, types and impact of SEA. The issue of SEA, as has been noted, is a complex and persistent problem that has garnered attention and concern from scholars and the international community. While scholars have identified multiple reasons for SEA’s appearance, this research focuses on the root of them all, meaning the socioeconomic inequalities and power dynamics related to gender, as well as the UN policies and actions that have contributed to the problem. Specifically, the patriarchy together with the concept of military and hegemonic masculinities prevalent in conflict zones; the UN’s ‘boys will be boys’ attitude towards SEA; the fear of victims and witnesses to report SEA; and the issue of immunity granted to peacekeepers. It is essential to address these issues in order to mitigate SEA in such environments.



Afterwards, the research analyzes the types of SEA and their extensions, since it is easier to contextualize the cases in order to find solutions. The types are: opportunistic sexual abuse, sadistic abuse, transactional sex and networked abuse and exploitation. All four types of sexual misconduct have distinct characteristics. However, these categories overlap each other in many cases, due to the blurry lines between them, leading to the presentation of new types due to the combinations created.

As it has been mentioned before, the impact of SEA is of great importance and affects individuals, local communities and international communities. SEA committed by peacekeepers has become a major concern for the international community as it undermines the objectives of peace operations. The impact of SEA on the societies affected by conflict is profound and long-lasting, eroding trust between local and international communities and amplifying power imbalances. When peacekeepers engage in sexual misconduct with local people, it strengthens patterns of suffering, violence, and impunity in post-conflict societies, reducing the ability of the international community to persuade local actors of the legitimacy of its objectives and strategies. The author highlights the detrimental effects of SEA and the importance of preventing such behaviors to establish the rule of law and promote and protect human rights in such areas.

In the last part of the research, there are some initiatives and preventative actions proposed by the UN in order to eradicate or mitigate the issue of SEA that have been thoroughly examined and discussed. In addition, some of the existing attempts are evaluated by the author, and some obstacles posed by the international community are analyzed, trying to find a solution in the investigation and prosecution of perpetrators. Among others, the development of better training standards, which is a continuous process, could help peace personnel achieve the targets of the mandate and preserve the principles of peace operations, and training material concerning gender equality and human rights can stop sexual misconduct in such areas. The deployment of female peacekeepers is another factor that could prevent SEA. Though scholars have argued that women are influenced by military masculinities, their presence in the field together with the deployment of male peacekeepers that respect local norms and communities could end SEA. Furthermore, the introduction of a new victim-centered approach mechanism encourages the victims to report cases of SEA and helps them get redress, but it has some challenges to face and a conflict of interests that may be an obstacle to the path to justice. Finally, the case of immunity status and the jurisdiction of States and organizations over peacekeepers are analyzed; however, all the solutions lead to the consent of TCCs, and without it, it is almost impossible to prosecute the perpetrators.

In the conclusion, the author answers the questions posed in the beginning and comes to some ambiguous results that, on the one hand can help in the mitigation of the SEA issue and in the promotion and protection of the human rights of victims and,

in general, of local communities, but on the other hand, he realizes that in some cases the issue may remain unchangeable.

## 2. Theoretical Background

### 2.1 Peacekeeping Operations

A peacekeeping<sup>1</sup> operation is a neutral military mission in a country that requires international support to make a gradual transition from conflict to peace. It consists of civilian, military, and police personnel drawn on a voluntary basis from member states of the UN. They are paid by their own governments according to their national pay rates, and each contributing country receives reimbursement from the UN in an amount approved annually by the General Assembly. The missions are established and maintained by the Security Council and funded by all UN Member States,<sup>2</sup> with the five permanent members<sup>3</sup> of the Security Council providing the bulk of the financial support.

Peacekeepers remain members of their own national armed forces and are not an UN army because the UN does not have such a military force. Peacekeepers are often referred to as blue helmets because of their light blue helmets and are responsible for tasks such as organizing meetings between the parties, monitoring the ceasefire, and protecting and promoting human rights. Peacekeepers are trained by their own member states and by the Integrated Training Service (ITS) of the UN.<sup>4</sup>

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<sup>1</sup> Peacekeeping is a multidimensional process with blurry boundaries between peacemaking, peacebuilding and peace enforcement. According to UN definitions in peace-making, measures and diplomatic action are taken to resolve active conflicts and reach a negotiated settlement between hostile parties; peace-building is about the creation of a sustainable peace through complex and long-term conditions; and peace enforcement requires explicit authorization from the SC and involves a range of coercive measures, including military force. For the purpose of consistency, in the present research the term “peacekeeping” is going to be used, apart from cases where an aforementioned peace process should be remarked.

<sup>2</sup> According to Article 17 of the UN Charter “*The expenses of the Organization shall be borne by the Members...*” and “*The General Assembly shall consider and approve any financial and budgetary arrangements...of such specialized agencies.*”

<sup>3</sup> The five Permanent Members (or P5) are the sovereign States that were given permanent seats on the UN Security Council by the UN Charter of 1945. These States are China, France, the Union of Soviet Socialist Republics (now the Russian Federation), the United Kingdom and the United States of America.

<sup>4</sup> The point is to give each category a holistic and similar training in order to achieve a uniform quality. For example, police personnel come from different police systems with different training and specializations, so it is important to adopt specific values and practices.

In order for a peacekeeping operation to be carried out, the Security Council should authorize the mission<sup>5</sup> through a resolution that allows the Secretary-General to assemble all the resources necessary to accomplish the tasks specified and carry out the mission. Each mission has its own mandate, designed by the Council to clarify the specific problems encountered on the ground in each specific situation, which makes each mission a different case. However, there are some common features that emerge in each mission, such as preventing a new outbreak of conflict, stabilizing the situation after the ceasefire, building bridges between the parties to reach a lasting peace agreement, implementing the peace agreement, and creating an environment for stable government based on democratic norms, fair governance, and economic development. Most missions are conducted by the UN, but the Security Council may authorize other regional organizations, such as the North Atlantic Treaty Organization (NATO), the European Union (EU), the African Union, or other coalitions of countries to conduct missions under multilateral peace agreements.<sup>6</sup> Peacekeeping missions are not mentioned in the original UN Charter, but they fall between Chapters VI and VII of the Charter, and in the future they could be referred to as “Chapter VI ½ operations” (POTI, 2018, p. 15). On the one hand, Chapter VI of the Charter deals with the responsibilities of the Security Council and emphasizes its role in making recommendations to and resolving disputes between parties to an alleged conflict, while on the other hand, Chapter VII allows the Security Council to take immediate action to enforce the peace and restore “*international security and peace*” in cases where there is a suspicion of a threat to the peace, a breach of the peace, or aggressive acts (POTI, 2018, p. 16).<sup>7</sup>

Peace operations as a means of achieving their objectives are based on three principles that are interrelated and mutually dependent. First, the guiding principle in

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<sup>5</sup> The proposal for peace missions requires a majority vote and no veto by the five permanent members.

<sup>6</sup> According to Article 52, para. 3, Chapter VIII of the UN Charter “*The Security Council shall encourage the development of local disputes through such regional arrangements...*” and Article 54, Chapter VIII of the UN Charter “*The Security Council shall at all times be kept fully informed of activities...by regional arrangements or by regional agencies for the maintenance of international peace and security*”.

<sup>7</sup> In this case, the Military Staff Committee (MSC) plays an important role in planning military operations and supporting arms regulation and possible disarmament. The MSC is a United Nations Security Council subsidiary body and its role is defined in Article 47 of the UN Charter.

operations is the consent of the parties to the conflict (Sebastian and Gorur, 2018, p. 13). The fact that consent is so important is because acceptance of the operation signifies the parties' commitment to a political process and to helping it achieve its goals. Otherwise, the operation would be a party to the conflict, it would distance itself from its goals, and its enforcement actions would undermine its legitimacy. Before authorizing a peacekeeping operation, the Security Council and the Secretariat hold clear discussions with the host government to assess the extent to which the government appears to support the mission and its responsibilities under the Status of Forces Agreement (SOFA). This assessment should also include potential risks to the security of both the mission and its personnel (Sebastian and Gorur, 2018, p. 33). However, the fact that the parties to the conflict have given their consent does not necessarily mean that operations will be uneventful, as local communities may influence them in positive or negative ways. For this reason, part of the pre-mandate process is consultation with all parties or civil society representatives, either separately or together, to express further views, clarify, and reduce misunderstandings.

Second, the concept of impartiality is a key factor in the effectiveness of a peace operation. Not only does it prevent peacekeepers from harboring biases against a particular group or supporting a particular party to the conflict, but it also helps ensure that the operation is based on and implements the values and principles of UN Charter (Levine, 2010, p. 3). The understanding of impartiality varies and is sometimes confused with the concept of neutrality. It has to be clear that neutrality means that peacekeepers will not act against a party to a conflict even if the principles of the UN Charter are violated, which means that the operation can be undermined. It is about dealing with each side neutrally, but not when a problem interferes with the execution of the mission's mandate (Levine, 2010, pp. 3-4). Nonetheless, the human factor plays an important role in all missions, and sometimes peacekeepers may deviate from the prescribed path because their views may differ from those of the locals, from the mission's mandate, or from their own moral values, which may lead to worse or better outcomes. On the one hand, some practices that lack impartiality may undermine the legitimacy of the operation; on the other hand, they may succeed in creating a better "peace" than the mandates (Levine, 2010, pp. 21-22).

Finally, the non-use of force, except in self-defense or in defense of the mandate, is the third key point in a peacekeeping mission. Peacekeepers may use force with Security Council authorization, and there are instances in which they have been asked to “*use all necessary means*” to deter attempts that disrupt the political process, protect civilians from any threat, and support the maintenance of law and order. The use of force should be consistent with the mandate and international laws, such as international humanitarian law, human rights norms, principles, and standards. Although peacekeepers may use force, including lethal force, for certain reasons, such as to enforce a cease-fire or truce or to create conditions that will allow the operation to succeed, they should not primarily enforce peace and should use force only as a last resort measure (Tubbs, 1997, p. 7). The use of force in cases of self-defense or defense of the mandate can sometimes be misunderstood by the local or international community, but it can also be used as a pretext to cover for unjustified violence (based on prejudice or other discriminatory grounds) against a party to the conflict or a vulnerable group of people.

## **2.2 Historical framework of peace operations**

Many historians have argued that the Delian League of ancient Greece, in fifth-century is the origin of peacekeeping (POTI, 2018, p. 14). Many centuries later, theorists such as Gentili mention the idea of intervention when the subjects are cruelly treated by their prince; Crucé speaks of universal peace and the establishment of a neutral place where nations would settle disputes; and Grotius talks about the principle of humanitarian intervention, when people suffer (Heraclides & Dialla, 2015, pp. 16-17).<sup>8</sup> Afterwards, there are agreements aimed at peace,<sup>9</sup> but the culmination of efforts was after World War I with the establishment of the League of Nations, which aimed at international cooperation, diplomacy, and peace enforcement. Although it did not achieve its goals, after World War II, the UN became the mechanism for nations to implement diplomacy and global peace.

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<sup>8</sup> According to John Vincent the word “intervention” in this context does not have the notion of “humanitarian intervention” of the modern ages, but it is linked with the meaning of saving the subjects by making war with another sovereign ((Heraclides & Dialla, 2015, p. 17).

<sup>9</sup> *Inter alia*, the Peace of Westphalia (1648), Utrecht (1713), Paris (1763) and the Concert of Europe (1815-18).

Scholars find many similarities between current peace operations and the peace instruments developed through the Treaty of Versailles and the LoN. Some examples include the referendums in Allenstein, Upper Silesia, and Marienwerder between Germany and Poland to recognize the sovereignty of each State for each region, and the LoN-supervised mandate system and international administration of Leticia and the Saar (Kertcher, 2012, p. 612). However, the weakness of the LoN to intervene effectively on occasions that appeared to lead to World War II, the decline of its power, and the collapse of its security system led it to fall after the end of World War II (Veatch, 1975, pp. 170-180).

During the Cold War, thirteen peacekeeping missions were deployed to deal with conflicts created by European decolonization, and they were all used as a mechanism to maintain the balance of power between the United States and the USSR.<sup>10</sup> At the beginning of this period, peacekeepers were only unarmed observers; and later, in the First UN Emergency Force (UNEF I) mission, in 1956, they were both armed and unarmed. Around 1950, peacekeeping operations began to develop the classic model and the principles that apply today (consent of the parties, impartiality, and non- use of force) (POTI, 2018, p. 17). However, there are examples where the failure of impartiality and consent is a landmark of frustration for peacekeeping operations, as in the case of the Congo (UNOC) in the early 1960s, where an intra-state intervention during a civil war led to UN troops confronting local militias, the UN becoming an active party, and increasing tensions between major powers in the UN (Kertcher, 2012, p. 615).

The first peacekeeping operation ever established, which continues to this day, is the United Nations Truce Supervision Organization (UNTSO). It was established in 1948 to create stability in the Middle East, monitor ceasefires, and prevent escalations in the region. Observer groups are stationed in Israel, Syria, Lebanon, and Egypt and report violations of ceasefires or peace agreements and serve as a safe and diplomatic tool of communication between the parties. The first peacekeeping mission, UNEF I, was established in response to the Suez Crisis in the Middle East to secure and

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<sup>10</sup> The Cold War period could easily become unstable and had the potential to trigger a new World War. For this reason, peacekeeping during this period was never used as a tool by the UN to unbalance the situation but always as a mechanism to prevent the escalation of conflict.

monitor the cessation of hostilities and the withdrawal of French, Israeli, and British forces from Egyptian territory, generally using no force except in cases where soldiers' lives were in danger. After nearly 10 years (1956-1967), the Egyptian government informed the Secretary General that it would no longer agree to the deployment of UNEF I to Egyptian territory and the Gaza Strip so that the United Arab Republic (UAR) military could act independently without being accountable to the UN operation (Burns, 1968).

Arguably, operations during the Cold War period have been characterized as modestly successful (Yilmaz, 2005, p. 16), having as a big failure their attempt to facilitate conflict resolutions and as a great success the prevention of the escalation of conflicts (Bratt, 1996, p. 79).

In the post-Cold War period, the need for peacekeeping has increased, and twenty more armed forces were created between 1988 and 1993, and later even more, mainly due to the increased capacity of the UN Security Council to monitor and conduct local elections, protect certain areas from enemy attacks, guard weapons, deliver humanitarian relief supplies during ongoing conflicts, and support the reconstruction of state functions in war-torn societies, as well as the collapse of two federal communist states, namely the Soviet Union and Yugoslavia, which resulted in numerous ethnic conflicts (Yilmaz, 2005, p. 18). This increased need for missions led to two main problems: the fact that most of the missions established consisted mainly of uniformed personnel necessitated a training process for the people participating in such operations, and therefore the Secretary General had to develop training materials and help Member States develop measures in this regard (Yilmaz, 2005, pp.) 25-26); the second problem is the fact that the budget allocated for operations has increased sharply, which has led to the fact that member states owe large sums of money, with the Russian Federation and the United States being the largest debtors (Yilmaz, 2005, pp. 23-24).

In the mid-1990s, three high-profile missions brought UN operations under criticism, either because the parties were unable to abide by peace agreements or because the operations lacked sufficient resources and political support, or because



peacekeepers exploited regions in turmoil: UNPROFOR, UNOSOM II and UNAMIR form the black spots of the UN history during this period.<sup>11</sup>

Based on the failures of previous years and in light of what had happened in Rwanda, Bosnia and Herzegovina, and Somalia, the Report of the Panel on United Nations Peace Operations (the Brahimi Report) undertook a thorough review of all peacekeeping operations and recommended improvements focused primarily on peacebuilding processes and humanitarian assistance support. To meet the needs of any post-conflict situation, the Brahimi Report follows a strict rule that leaves no room for ambiguity: the adoption of clear, credible, and achievable mandates. History has shown that many of the strategies adopted in the past were inconsistent, ambiguous, underfunded, or even contained a variety of interpretations, largely due to the lack of agreement at SC, which led to the failure of the peace process (White, 2001). However, even after implementing the recommendations of the Brahimi Report, two missions prove that a mandate that is clear, credible, and achievable from the outset is not necessarily effective. In UNAMSIL and MONUC, peacekeepers were deployed in an inappropriate environment because SC's assessment of conditions on the ground was wrong, causing both missions to fail. These examples show the inherent contradictions of the Brahimi Report in terms of avoiding mission failure and calling for clarity without the flexibility that such an unstable environment requires (Gray, 2001).

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<sup>11</sup> Regarding the three missions, they all have some common mistakes either because the help of international community was absent and wrongly applied or the mandates were incomplete; UNPROFOR was ill-equipped with inadequate defense personnel, there was a wrong interpretation of the mandate and an arm embargo through the Resolution 713 and inaction by international community that turned its back to Bosnia (HRW, 1995); UNOSOM II was lacking of political and diplomatic processes, since excessive use of force was the substitute for time and patience, there was no military common line and there were many rivalries between NGOs and after many losses the result was the Somalia Syndrome, meaning that international community was thinking about whether it should get involved and help countries in need, risking the lives of their own people (Kühne, et al., 1995); UNAMIR was abandoned by the international community and West countries as a consequence of the incidents in Somalia. Although they knew about the upcoming genocide, there was not only inaction but also reduced resources under Resolution 912, so the mission could not be deployed until the genocide was over (Melvern, 2000).

On the whole, while there are rules and procedures that determine the deployment, budget, and training of peacekeeping personnel, it appears that the human factor can positively or negatively influence the evolution of the operation depending on the situation. Support from regional organizations has proven to be very helpful in a well-organized environment, but it can lead to disastrous results in cases where there is a lack of consent and impartiality. The three principles of peacekeeping can easily be overridden by the personal interests of conflicting parties or personnel, hampering operations or leading to unavoidable situations. During the Cold War, peacekeeping missions were able to keep the peace and provide a neutral diplomatic ground for the two major powers, but after the fall of the two major communist States, there is instability that requires a better and more determined way of deploying peacekeeping missions. Although the Brahimi Report is absolute and determinative, it seems that peacekeeping operations need flexibility and specific actions according to the needs of the respective situation. There are cases that show that UN is unable to deal with unstable situations because of misjudgment of the situation on the ground or the rapidly changing conditions, and failure to find an effective way for a sequential peacebuilding mechanism that leaves no room for error and avoids a vicious cycle.

## **2.3 SEA on post-conflict areas**

### **2.3.1 Definitions**

In January 2016, the SG established a High-Level Steering Group in order to create a common terminology concerning SEA and to help UN systems coordinate and fight this issue effectively. The glossary updates the existing terminology related to SEA and gives a better understanding and conceptual clarity, having collaborated with many UN entities that confront this issue.

First of all, it should be clear that this research describes a type of conflict-related sexual violence. According to the UN,<sup>12</sup> the word ‘‘conflict’’ signifies the profile of the perpetrator, who is linked with a State or non-State armed group and the

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<sup>12</sup> UN (2017) *Glossary on Sexual Exploitation and Abuse*, Second Edition. Available at: [https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf).

profile of the victim<sup>13</sup>, who is a member of a persecuted group from an area of impunity. Sexual violence refers to any act of sexual nature that causes one or more persons to be involved through coercion, threat, or force.<sup>14</sup> Sexual violence can be gender-based violence that signifies someone who becomes a victim due to her or his actual or perceived gender identity. While many women and girls are affected disproportionately by gender-based violence, men and boys, and members from the LGBTI populations can be targeted as well, giving the term a broader meaning and being related to norms of masculinity/femininity, superiority/inferiority and/or gender norms.<sup>15</sup> Sexual activity with minors (girls and boys) is any sexual act with a person who is under the age of 18, regardless of the age of consent in local communities, and is considered sexual abuse. In cases other than peace operations, the term gets a narrower meaning and signifies only the sexual penetration of a person younger than 18.<sup>16</sup>

Sexual abuse and exploitation are serious misconduct acts, meaning any action that does not follow specific regulations and obligations under the Charter of the UN, the Staff Regulations and Staff Rules, the UN Standards of Conduct, and/or any relevant administrative or observation instrument that regulates the conduct expected.<sup>17</sup> Sexual abuse is defined as the *“Actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”*<sup>18</sup> and sexual exploitation is *“Any actual or attempted abuse of 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.”*<sup>19</sup> Both terms have a broad meaning concerning any sexual act, including sexual assault, and

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<sup>13</sup> A person who is or has been sexually abused or exploited. For purposes of consistency, the term ‘‘victim’’ is going to be used in this research, apart from cases where the term ‘‘survivor’’ cannot be avoided. The term ‘‘survivor’’ has the same meaning as the term ‘‘victim’’.

<sup>14</sup> UN (2017) *Glossary on Sexual Exploitation and Abuse*, Second Edition. Available at: [https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> ST/SGB/2003/13.

<sup>19</sup> Ibid.

any sexual exploitative behavior (such as transactional sex, forced prostitution, exploitative relationships, trafficking etc.) due to abuse of position that leads to the gaining of a profit.

The UN separates the term “sexual harassment” with the SEA by justifying it as any sexual act or sexual nature behavior in the work context against UN or related personnel that humiliates another person, creates an unpleasant work environment, or interferes with the work of the person.<sup>20</sup>

In general, the UN tried to use a certain terminology in order to make the concept and context of each term clear. However, it is difficult to define exactly each term, since their aspect is constantly changing, creating inaccuracies. The UN uses many broad meanings and umbrella-terms to give a better understanding, but at the same time, it misses some crucial facts. Firstly, in conflict-related sexual violence, the UN talks about armed personnel, while SEA perpetrators can be unarmed personnel as well (Westendorf, 2020, p.7). While referring to forced prostitution as a type of sexual exploitation, it does not refer to the fact that some people are not forced, but they choose to engage in sexual activities as a way to find money, food, support, and protection in areas where impunity prevails (Simic, 2012 p. 4). In addition, UN definitions do not prohibit but strongly discourage consensual sexual relationships between UN personnel and local people,<sup>21</sup> which in some cases are resulting in “peace-babies”<sup>22</sup> and their abandonment after their fathers leave the area. This issue affects disproportionately both mother and child due to the fact that most of the time they are subjects of discrimination by the local community because of their respective customs and norms (Spencer, 2004, p.171). Furthermore, the consideration that prostitution and sexual relationships are part of the sexual exploitation violates international human rights law and is opposed to international legal norms and standards (Simic, 2012, p. 5). Another missing point from UN definitions is the emotional feelings that may be born between local women and peacekeepers and in

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<sup>20</sup> UN (2017) *Glossary on Sexual Exploitation and Abuse*, Second Edition. Available at: [https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf).

<sup>21</sup> UN WOMEN, (2015), *Sexual Exploitation and Abuse – A summary of the latest policy recommendations*, p. 2. Available at: <https://wps.unwomen.org/resources/briefs/Sexual.pdf>.

<sup>22</sup> Children who are fathered by UN personnel.

some cases are based on false hopes that a long-term relationship may help them get out of their poverty (Simic, 2012, p. 71).

### **2.3.2 History of SEA**

The history of SEA<sup>23</sup> begins with the ONUMOZ mission in 1992, where there were allegations that UN personnel procured local women and girls for prostitution. Girls were pushed due to prior sexual abuse, a lack of education, and poverty (Simic, 2012, p 35). After ONUMOZ, the UNTAC mission in 1993, where the number of prostitutes increased during this period and the issue emerged when women working in brothels complained to the UN about excessive violence by its personnel. At that time, the head of the mission, Yasushi Akashi, declared that *‘boys will be boys’* and no disciplinary action was taken; the leadership of the mission recommended that UN personnel should not wear uniforms when they are visiting brothels and should not park UN vehicles outside of brothels; and thousands of condoms were shipped because HIV and STIs had spread throughout the country (Martin, 2005, p. 4). The next recorded incident is from the UNMIBH operation in 1995, where UN personnel were trafficking women and girls to work as sex slaves in brothels. This transactional sexual activity came to light in 1999 because of the media and the increasing public attention, which made OHCHR admit that UN personnel are implicated in this exploitation and deal with the issue. However, the UN failed to protect migrant prostitutes due to the limited definition provided concerning trafficking and defending only women who did not know that they would be working in Bosnia as prostitutes, excluding the trafficked women who knew it (Westendorf, 2020, pp. 37-38).

The history continues with the UNMEE operation in 2000, where UN peacekeepers were having sex with minors. Italian and Danish soldiers had been alleged to have had sexual relations with minors, and three Danish soldiers were found guilty and were sent back to their country for having sex with a 13-year-old girl. In 2002, an Irish soldier was alleged to have made pornographic videos with Eritrean women. He was sent back to Ireland and was dismissed from the Irish Army, while his Eritrean girlfriend, who was the main woman in the videos and claimed that he had promised to take her to Ireland, was sentenced to two years in jail. From that moment, any woman, who was alleged to be a prostitute was arrested (Olsson et al.,

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<sup>23</sup> The history of SEA is long and continues till today. In this research, some of the early cases that started to draw attention to the issue are presented.

2004, p. 14). In peacekeeping missions in West Africa (Guinea, Liberia, and Sierra Leone), in 2001, many allegations emerged, with perpetrators being UN peacekeepers and NGO staff. OIOS investigations confirmed that there were rapes of girls and boys, transactional sex for money and food, and a large number of peace babies, who were not recognized by civilian staff members.<sup>24</sup> After this incident, in October 2003, the SG issued the UN zero-tolerance policy on SEA, which required all UN and non-UN entities or individuals to accept its standards of behavior and implement them.<sup>25</sup>

It should be noted that the history of SEA in peacekeeping may have started earlier, and there may have been many more cases of sexual violence throughout the history of peacekeeping operations, but there are some factors that keep the victims or the witnesses from revealing the truth. According to the UN, the major factor that impedes the victims from reporting SEA is the shame and stigma that follow the sexual violence and the fear that they will be cast out by their families and community,<sup>26</sup> and the misogynistic and sexist patterns of victim-blaming culture that result in failure to take allegations seriously (Mazurana and Donnelly, 2017, p. 44). Secondly, the legitimacy of the justice system in these cases is another factor in the underreporting of SEA. Victims choose to report sexual violence only if the mechanisms are trustworthy, since there are cases where the victims are apprehended, resulting in delayed justice<sup>27</sup> or no justice at all.<sup>28</sup> Along with the victims, the witnesses are afraid to speak out about the SEA since people from local communities are scared of the consequences for them and their families, and humanitarian workers are scared of them being blacklisted or getting fired. They do not trust the system and people in positions to respond; they have the fear of reprisals by the aggressors; they are considering the local cultural norms; or they do not know if the sexual misconduct was ‘*serious*’ or ‘*violent*’ enough in order to report it.<sup>29</sup>

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<sup>24</sup> A/57/465.

<sup>25</sup> ST/SGB/2003/13.

<sup>26</sup> A/HRC/49/CRP.4, para. 196.

<sup>27</sup> Ibid (para. 197).

<sup>28</sup> Ibid.

<sup>29</sup> Humanitarian Women’s Network, (no date), *Reporting and Repercussion*. Available at: <https://www.humanitarianwomensnetwork.org/reporting-repercussions>.

The standards of the zero-tolerance policy, which emerged after the events in West Africa, are the following: sexual exploitation and abuse are serious misconduct and therefore grounds for disciplinary action; sexual activity with children, transactional and exploitative sexual acts are prohibited; sexual relationships between UN staff and locals are "*strongly discouraged*" because "*they are based on inherently unequal power dynamics*"; UN staff should create and preserve an environment that prevents SEA; and any staff member who has concerns about SEA from a fellow worker should report it immediately.<sup>30</sup>

The zero-tolerance policy does not take into account consent between adults and prohibits transactional sex even in cases where the local people try to make a profit through sexual activity.<sup>31</sup> In addition, sexual relationships between local people and peacekeepers are strongly discouraged. Simic states that according to the testimonies in her book, this norm is considered a violation of individual human rights and freedoms (Simic, 2012, pp. 127-128). Simic describes that women in Bosnia, even '*during the bloodiest war in Europe after World War II*', had a desire to enjoy sex and only sex, in some relationships women were dominant, and in many cases interviewees had relationships that were normal as in peacetime, which refutes the UN's opinion of unequal power dynamics (Simic, 2012, pp. x-xi and pp. 120-121).

Briefly, the SEA history provided explains that acts of sexual violence appeared almost from the beginning of peacekeeping but gradually started to draw the attention of the UN. With the support of the world, the victims managed to get some assistance from the UN – though it was not very efficient – and from the ‘boys will be boys’ culture moved to the zero-tolerance policy. The ‘boys will be boys’ culture shows a hyper-masculine attitude and a tradition of silence, which justifies an issue that is based not only on the abuse of feminine populations but also on the abuse of power that peacekeepers have (Martin, 2005, p. ii). However, even with the zero-tolerance policy, the situation changes slowly. The standards of the policy are not specific and are defined broadly, having in some cases the same issues as the definitions given by the UN (such as the emotional factor) and according on

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<sup>30</sup> ST/SGB/2003/13, p. 2, para. 3.2 (e).

<sup>31</sup> ST/SGB/2003/13, p. 2, para. 3.2 (c).

experiences on the ground, in many cases people are talking about breaches of their human rights.

### **3. Literature Review**

#### **3.1. Reasons behind SEA**

Among scholars, there are many opinions about the reasons behind SEA. However, Higate explains in a comprehensive way a general category concerning the cultural and economic inequalities based on gender power relations between UN staff and local communities, and Punyarut adds that in the course of time a second cause arose regarding UN policies and the UN's action to SEA allegations (Higate, 2007; Punyarut, 2006).

First of all, gender power relations are about the belief that males have a superior advantage over females, leading to unethical behaviors based on masculinity. Masculinities vary across time, contexts, groups, and networks and are performed differently and inconsistently (Connell, 1995). In these areas, military and hegemonic masculinities prevail due to socioeconomic inequalities. The concept of military masculinity describes that masculinity is acquired and proved through military service or combat (Eichler, 2014, p. 81). Through military masculinity, a "warrior brotherhood" environment is created, which dehumanizes others and lets soldiers achieve the goals of the mission (Kirby and d' Estree, 2008, pp. 239-240). Furthermore, "real men" and warriors need a way to relax and be relieved from military activities and to be able to endure the stress of military life or the situation in conflict, resulting in SEA (Kirby and d' Estree, 2008, pp. 236-237).

In relation to the "warrior" ideal, hegemonic masculinity is created due to the unequal power dynamics in such fields and is fueled by racial and/or colonial stereotypes, and according to Agathangelou and Dittmer and Apelt are based on the Western/white/hypermasculine/thoughtful/superior man, namely the peacekeeper, and the less masculine/feminine/colored/uncivilized/racially inferior local people (Agathangelou, 2003; Dittmer and Apelt, 2008). In some situations, this "superiority" often derives from local populations, who see the material goods and financial resources of peacekeepers (Higate, 2004).



As demonstrated above and as many scholars have argued, racism, unequal gender roles, opportunistic sexual activities, sadistic sexual torture, personal profit and sex trafficking are all reasons for SEA and ways of expressing these socioeconomic inequalities related to gender power.

Secondly, UN policies and actions encourage and leave space for SEA and its perpetrators, especially in the first years of its appearance. As it has been mentioned before, the “boys will be boys” attitude justifies SEA and provides the belief that it is an inherent characteristic of human nature (Lutz et al., 2009, pp. 6-7). In addition, the fear of victims and witnesses to testify SEA to the respective UN mechanisms reveals the inability or malfunction of the organization to address justice (Martuscelli and Rinaldi, 2017, p. 237). The development of a zero-tolerance policy regarding these crimes aimed at confronting and condemning such activities, but it has been ineffective and there is a continuous increase of SEA cases (Martuscelli and Rinaldi, 2017, pp. 218-244).

Last but not least, as Freedman explains, another key reason for the persistent SEA offenses is the impunity derived from immunity granted to UN peacekeepers while in UN service (Freedman, 2018). Immunity is a privilege given by the UN to its personnel and is divided into two categories: the functional immunity and the absolute immunity.<sup>32</sup> Functional immunity is given to civilian staff and protects them from any legal process related to their operations and official functions while on duty, and absolute immunity is granted to military peacekeepers.<sup>33</sup> The immunity can be waived by SG, and investigations are conducted in order to determine if the functional immunity is applied or not (Freedman, 2018). However, in most cases, the UN has failed to address justice for reasons such as failure in cooperation between the UN and

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<sup>32</sup> Reinisch A., (2009) *Convention on the Privileges and Immunities of the United Nations*, UN. Available at: [https://legal.un.org/avl/pdf/ha/cpiun-cpisa/cpiun-cpisa\\_e.pdf](https://legal.un.org/avl/pdf/ha/cpiun-cpisa/cpiun-cpisa_e.pdf).

<sup>33</sup> According to the Memorandum of Understanding (MoU) that is agreed between the UN and a troop contributing country (TCC), military personnel can only be prosecuted by the TCCs for crimes committed on mission and by following the military justice system of the respective country (Freedman, 2018). As Freedman, notes the “while on duty” point is problematic because crimes such as unlawful killings are covered by functional immunity, and the UN should start investigations based on the conditions and the context rather than considering if the perpetrator was on duty or not (Freedman, 2018, pp. 966-967).

local investigators, ineffective mechanisms, complexity of laws and differentiation of regimes between the UN personnel, and the barring of investigations by the TCCs and the host States (Freedman, 2015). The issue of immunity will be explained extensively later in this research as it can be a determinant in the prevention of SEA in post-conflict areas.

### **3.2. Types of SEA**

According to the information that is currently available, interveners can engage in a wide range of sexual misconduct, including opportunistic sexual abuse, sadistic abuse, transactional sex, and networked abuse and exploitation. Therefore, it is helpful to examine SEA in terms of how specific cases involve money and other material resources, how many of them are planned or how many perpetrators are involved, and whether they are linked with larger criminal networks. By understanding the different types and their extensions, it is easier to distinguish the context in which they occur and to find solutions that may help reduce or eliminate such issues.

#### **3.2.1. Opportunistic Sexual Abuse**

Opportunistic sexual abuse is implemented more for private reasons or as a practice of war than as a weapon of war (Westendorf, 2017, p. 358). Regarding this type of SEA, the issue is about opportunistic rapes and not consensual relationships or consensual sex intercourse, as mentioned before (a fact that removes the victim status and gives an agency to local people who are involved in sex intercourse with their own will), meaning that the victims had no psychological or material benefits. The main factor that differentiates this type of SEA from the others mentioned below is that opportunistic sexual violence serves the private purposes of the rapists and does not include preplanning or coordination, meaning that it is based on selfish ends and perpetrators do not use it as a “weapon” (Gassamap, 2018, p. 195). Opportunistic rapes occur in a context where SEA is a norm, since wars are characterized by sexual and gender-based violence (Nordas and Cohen, 2021, p. 196). In addition, in the home States of many of peacekeepers, there is this normalization of sexual violence, mainly against women, suggesting a general violence culture that creates a certain behavioral pattern and together with the military deployments by the UN, the issue becomes

more apparent (Wood, 2009). According to UN data,<sup>34</sup> regarding SEA allegations, it is clear that from 2015 until 2022, peacekeepers derived from countries such as South Africa, Democratic Republic of Congo and Cameroon, where sexual and gender-based violence is significant, are responsible for the most allegations of sexual misconduct.<sup>35</sup>

### **3.2.2. Sadistic Abuse**

The second type of SEA, according to Westendorf, is planned and sadistic abuse. This category constitutes a coordinated and violent form of rape that has nothing to do with material benefits, transactional or opportunistic sex and only serves the sadistic pleasure of the perpetrators and is connected to torture and sex slavery (Westendorf, 2017, p. 359). There are many incidents concerning peacekeepers, especially from military personnel, who were implicated in such allegations. Indicatively, in 2015, a leaked UN report referred to sexual abuse of homeless and starving minors (they were between 8 and 15 years old) in MINUSCA operation by 26 peacekeepers. Other cases are about obliging girls having sex with dogs, ending up socially excluded or dead; teenagers get beaten, raped and tortured to death; prisoners getting sexually tortured and local leaders getting beaten to death, together with murdering others from the local community, including women and children (Westendorf, 2020, p. 36).

### **3.2.3 Transactional Sex**

The third type of SEA is transactional sex, and it has the highest number of allegations. This transactional or survival sex is the exchange of sex for money, food, job or protection. It is not as criminal as the two types above, because it depends on the nature of the transaction, the legislation of the host State and the person's

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<sup>34</sup> Grady suggests that UN statistics on allegations of SEA are unreliable because of poor data collection and data management, potential fake allegations, underreporting due to a lack of trust in the respective mechanisms, and the mistakes that happened during the reporting (Grady, 2016, p. 942).

<sup>35</sup> According to UN statistics, DRC is responsible for the highest number of allegations of abuse, South Africa for allegations of exploitation and Cameroon is the number two country for both categories. The data are available at: <https://conduct.unmissions.org/sea-data-introduction>.

consent.<sup>36</sup> It has, in a way, the characteristics of agency and negotiation, even though they are under unfavorable conditions.<sup>37</sup> It is a choice that flourishes in post-conflict environment, where there is material deprivation, insecurity, the inability to work anywhere, and the ‘shame’ status that follows some girls and women after the war-time sexual violence. Transactional sex does not only concern peacekeepers and aid workers, but also local people with power who take advantage of these sex economies and are getting involved. These ‘sugar daddies’ are people with authority in camps: government workers and officials, ex-combatants, police officers, businessmen, or even the teachers of the community.

Transactional sex between adults and children differs. Adults have the agency to choose if they want to engage in transactional intercourse in exchange for material goods such as money, food, or accommodation, meals in restaurants, or different types of humanitarian support. Furthermore, the transactional relationships of adults are also characterized in some cases by romance, but as it has been explained earlier, the UN ‘*strongly discourages*’ such romantic relationships because they undermine the credibility of the operation. On the other hand, children are often encouraged or pushed by their families to have sexual intercourse in exchange for materials and to ensure the survival of their parents, sisters and brothers.

Consent in these situations is difficult to distinguish, especially when it concerns children and adolescents. In some cases, the ‘rape is disguised as prostitution’ and the rapist ‘*pays the victim afterwards in order to suggest a legitimate consensual transaction*’.<sup>38</sup> In addition, the issue of consent creates dependency relationships afterwards, meaning that the abused seeks out further transactional intercourses. The case of a 14-year-old boy from South Sudan explains the issue better, because after he was raped by a peacekeeper, he returned to the same place, hoping that he would be picked by other peacekeepers and would exchange his

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<sup>36</sup> Westendorf mentions that this type of SEA is not actually criminal; it is criminal only when children are involved in prostitution, leaving some space in the protection of adults, who were victims of transactional sex (Westendorf, 2020, pp. 36-42).

<sup>37</sup> Spencer notes that the expression of agency in transactional sex covers the fact that ‘*these exploitative circumstances do not involve real choices*’ since they prevail in contexts of desperation and insecurity (Spencer, 2005, p. 171).

<sup>38</sup> A/59/710, p.8, para. 6.

services with money. However, children are often deceived and do not get ‘‘paid’’ after the agreed-upon transactional sex.

#### **3.2.4. Networked Abuse and Exploitation**

Networked abuse and exploitation is the connection and cooperation of UN peacekeepers with criminal networks in order to make a profit, such as money. It is based mostly on sex trafficking, forced prostitution, and in general, sex services provided by local people – mainly girls and women – to clients from within or outside the State. There are cases, such as in operation UNTAET, where, due to the increased demand for sex services, women from Thailand, China, and other regional States were trafficked in East-Timor leading to an internationalized sex industry (Koyama and Myrntinen, 2007, pp. 33-34). The same pattern has been observed in Thailand during the Vietnam War, with the sex industry spreading and catering to not only locals but also foreign tourists (Koyama and Myrntinen, 2007, pp. 33-34). These types of sex economies tend to survive even after peace operations have ended and create gendered power relations that set up and continue the sex work and trafficking in post conflict economies (Jennings and Nikolic-Ristanovic, 2009, pp. 9-10).

This analysis of the types of SEA shows the forms that sexual misconduct takes and the distinct characteristics each category has. There are many cases where these categories may overlap each other and have blurry lines between them, but the only common characteristic is sexual exploitation and abuse; the opportunistic sex serves the private purposes of the rapist without the consent of the victim; the sadistic abuse is preplanned and coordinated; the transactional sex is being performed for the exchange of materials, and in most cases there is consent; and the networked abuse and exploitation is the cooperation with criminal activities connected with local or international networks. As it has been presented, sometimes the opportunistic sex may become transactional because after the rape, the perpetrator may give something to the victim in order to gain her or his ‘‘consent’’ and demonstrate the agency, or in many cases, the exchange of money for sex may be understood as both transactional or networked sexual exploitation, but the cooperation with criminal networks makes this overlap distinguishable, so it is important that these categories have their own unique features.

In addition, this categorization also makes it easier to understand the factors behind SEA and the actual effort of the UN and international community to make an impact on this issue. As it has been presented above, there is a big range of contextual factors that fuel SEA and can be assorted into two categories: the cultural and economic inequalities and UN policies and actions. The confluence of military cultures, gendered sexual norms, and the uncontrolled environments into which peacekeepers are placed makes opportunistic sexual assault easier. Transactional sex is perceived by civilians as a means of securing basic needs in a situation of deprivation and poverty, where material imbalances between interveners and locals are apparent and survival sex economies arise. Criminal trafficking or prostitution networks exist and can thrive by enlisting interveners in their business, which leads to networked abuse and exploitation in an uncontrolled profit-seeking environment. Finally, the sadistic abuse is triggered by opportunism, the deviant sexual desire of people working in unstable and unregulated environments, and the influence of colonial violence.

### **3.3. Impact of SEA**

So far, the issue of SEA, its historical background, the factors responsible for its appearance in all post-conflict areas, and its types have been presented. Similar to how diverse sexual exploitation and abuse are in nature, so too are the effects that they have on individual and community levels, on mission-specific outcomes for peacebuilding as well as on the capability and credibility of the international community in general. In an effort to promote peace, security, and justice, the international community sends peacekeeping forces into areas affected by armed conflicts. The international community seeks to consolidate enduring peace by promoting and protecting human rights, reducing human suffering, fostering the development of stable and prosperous societies, fostering the participation of women in politics, and bolstering the rule of law and security institutions. It has not been mentioned until now, but not all peacekeepers are implicated in SEA – in fact, the highest number of them is not associated with it (Westendorf, 2020, p. 2). However, the actions of the few who are involved in the problem have a great impact on the work of the many, who are not, and this is why this issue is so critical.

### **3.3.1. Impact on Individuals**

Perpetrators deployed in an unstable environment exploit and abuse people in need who want to escape hardship. This issue has first and foremost an impact on individuals, who are the victims of SEA, and later it affects communities and the legitimacy and credibility of the international community. The greatest impact of SEA on its victims is the violation of their human rights and fundamental freedoms. The failure to protect human rights is affecting the lives of individuals, not only on a personal level but also on a community level (Westendorf, 2020, p. 117). Victims are having their mental and physical health affected by SEA, and as noted before, in some cases the UN knew about it but did nothing. In the case of operation UNTAC, as mentioned before, though the STIs and HIV were spreading all over the community because of unsafe sex, the UN's reaction was to share condoms instead of doing something in order to stop the abuse. Prostitutes in Timor-Leste – trafficked or not – working in illegal brothels, were arrested by the police and often held in arbitrary detention, and in cases like in Bosnia, trafficking victims were abused and prosecuted for visa violations or crimes against morality, sometimes deported out of the country, and then being again victims of trafficking by the same networks (HRW, 2002, pp. 37-39). In addition, victims of SEA are stigmatized and discriminated by local communities confronting issues of future development. In Timor-Leste, girls who were dealing with transactional sex could not go back to school to finish their education, resulting to no economic prospects for the future (Westendorf, 2020, pp. 90-91). Some others could not be married to someone, since they had sex with others (though they were raped), and many women were ostracized together with their ‘‘peace-babies’’, leading them to continue working in the sex industry and being unable to leave this sector even if they wanted (Westendorf, 2020, pp 79-81). The cases with ‘‘peace-babies’’ often had the stress that they not only brought shame to the family, but also they brought a new problem since families had an extra mouth to feed in conditions of poverty and beggary (Westendorf, 2020, p. 91). Concerning the ‘‘peace-babies’’, they were also marginalized by the local community due to the fact that they were products of immoral sex intercourse or even because they had different skin color, and often discriminated by their own family since they were unable to inherit family property, because they had as a father a stranger man and a different bloodline (Wagner et al., 2022, p. 316; Westendorf, 2020, pp. 91-96). On individual level, the issue of aid workers who have been sexually abused by local communities

could be added. In some cases, there are local people who sexually harass and abuse humanitarian workers, as Westendorf notes because *“if they [the UN staff] do this to our women, we’ll do it to theirs”* (Westendorf, 2020, p. 94).

### **3.3.2. Impact on Community**

In addition to the impacts at the individual level, SEA also affects the local communities in cultural and economic aspects. First of all, peacekeepers try to create a sexualized culture of impunity through behaviors of sexual harassment; in some cases they also teach local boys how to sexually harass women and girls in the street, or through false promises of marriage in order to exploit local women (Westendorf, 2020, pp. 92-94). Such behaviors, during a trial of transition from war and violence to independence and peace, which is an opportunity to change and shift patterns and behaviors of discrimination, create a new postwar model of male perpetrators, who abuse and exploit women and children, as well as being associated with culture and norms of impunity (Westendorf, 2020, p. 95).

Secondly, in post-war communities, the economies are affected and based on the same pattern. However, in this case, the peacekeepers are not the only factors that influence the economies, since direct effects of war, such as the disintegration of economies, law and order and conventional social safety nets, also play a role. According to Kyoma and Myrntinen, the arrival of peacekeepers helped the development of the sex industry in Timor-Leste and Jennings and Nikolić-Ristanović add to a similar finding that economies based on sex, outlasted the peace operations that built them in cases like Bosnia, Kosovo, Haiti, and Liberia (Koyama and Myrntinen, 2007; and Jennings and Nikolić-Ristanović, 2009). In many cases, a high number of existing businesses include the prostitution in their provided services, or even managers close their businesses and open something related to the sex industry because the demand and the profit are big (Jennings and Nikolić-Ristanović, 2009, p. 11). The sex industry creates income for many people and is being accepted as a supplementary or substitute feature of the formal economy, which is inefficient and allows the sex economy to flourish (Jennings and Nikolić-Ristanović, 2009, p. 11-12). Despite this, many businesses are cooperating with criminal networks that promote sex trafficking, and with the help of peacekeepers and local authorities, the host State is becoming a destination for sex tourists and pedophiles who take advantage of the impunity and unregulated environments (Bell et al., 2018).



These two SEA consequences create the environment for the gradual institutionalization of sexualized behavior and impunity in local communities. In post-conflict societies, perpetrators with the help of security and judicial sectors, try to normalize the practice of SEA in everyday life and establish a non-intervening environment, where SEA is unaccountable to relevant authorities (Westendorf, 2020, p. 99). There are cases where, while local police found politicians and other authorities to be part of the sex industry, they were either bullied in order not to arrest them or they voluntarily ignored them under the arrangement that they would be allowed to participate for free (Westendorf, 2020, p. 101). The relationship between authorities and impunity undermines the establishment of rule of law and the promotion of human rights in post-conflict societies. Another feature of this unpunished culture is the fact that local authorities know about the inaction of the UN concerning SEA and its responses to relevant crimes, knowing that they will get help from peacekeepers or they will not be punished at all (Westendorf, 2020, p. 102). However, this inaction has further consequences because the local community concludes that there is no point in reporting SEA or fears reporting cases, as it has been mentioned before.

### **3.3.3. Impact on International Community**

After all the things mentioned above, the issue of SEA affects the international community and its legitimacy. Sexual misconduct causes conflict and mistrust between local communities and international aid staff because they see that their goal cannot be achieved as it should be. Local people fear uniformed personnel; they are angry by these behavior and disappointed by the culture of silence concerning sexual misconduct; and they do not help or cooperating with peacekeepers and aid staff because they do not want to be victims of SEA; especially they believe that their women should not work with UN, because they will be raped or have transactional sex with them (Westendorf, 2020, pp. 105-106). As Martin shows, the communities understand that everyone can be a victim of SEA, mainly when there is a need for money and food and the survival of families in the context of poverty and deprivation (Martin, 2005, p 5).<sup>39</sup> Furthermore, there are cases where not only local communities

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<sup>39</sup> In some cases, the sexual misconduct of peacekeepers, together with the anger of local people, creates an environment of violence, and peace personnel become the target. Many local people attack

were disappointed by UN actions, but also the aid staff. The “boys will be boys” attitude, the publicly denial of SEA allegations from a person in high position<sup>40</sup> and a festive party during a siege<sup>41</sup> are some of the disrespectful practices that led people to have little trust in international responses and made them be very judgemental. Another factor that causes the fight between aid staff is the SEA cases that come to light and are reported by aid workers.

According to Séverine Autesserre, the structure of inequality permeates connections between interveners and their local counterparts, which strengthens borders between the two groups and enrages local populations. Autesserre has demonstrated how the structure of inequality in peace operations reduces their effectiveness by fostering local resentment of interveners and sentiments of being neglected (Autesserre, 2014, pp. 194-215). Caplan adds that the legitimacy and success of peace operations are linked with the trust of the local population and that sexual misconduct can undermine the achievements of the international community, while the cooperation of different elements can be crucial in undertaking the mandate agreed upon (Caplan, 2017).

In short, SEA committed by peacekeepers is seriously affecting the outcomes of peace operations and undermines the objective, which is to support the establishment of the rule of law, peace and security, the promotion of human rights, and the protection of vulnerable groups. The issue has clear and long-term consequences for the societies concerned and for the achievement of the mandate of each operation. SEA is an essential source of mistrust between local and international communities, especially when it is combined with other behaviors that amplify the power imbalance between them. When a community transitions from violent to peaceful modes, the international community should work to support social and political organization. Peace operations are a great opportunity to assist in the

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peacekeepers in order to take revenge for SEA victims, and lead to many deaths in both sides (Westendorf, 2020, p. 122).

<sup>40</sup> The SRSg and head of the mission, Jacques Paul Klein, denied SEA allegations and the implications of peacekeepers in trafficking and prostitution, and as a consequence, many of the staff lost faith in his leadership.

<sup>41</sup> During the siege of Sarajevo, the UN base hosted a Christmas gala when no one had food, heating, and electricity, using Bosnian police to protect the area and having them standing outside in the cold.

implementation of such norms, but this chance is lost when interveners engage in sexual misconduct with local people. In this case, the patterns of suffering, violence, and impunity in a post-conflict society are strengthened and reduce the ability of the international community to persuade local actors for the legitimacy of its objectives and strategies in the peace operations.

#### **4. Initiatives and preventive measures**

In this chapter, after having seen and commented extensively on the SEA issue, some initiatives and preventive measures will be presented that can affect SEA in order to extinguish it or at least reduce its presence, and some of the already applied efforts that can ameliorate the situation will be criticized. The initiatives presented consist of three different approaches: the peacekeeping-centered approach, namely the development of better training standards and the deployment of female peacekeepers; the perpetrator-centered approach, namely the immunity status and the jurisdiction over peacekeepers, are commented, because they are factors that put barriers in the investigations of the reports and prosecution of perpetrators; and the victim-centered approach, which aims to redress the victim.

##### **4.1. Developing better training standards**

First of all, the UN should continue developing and improving the training standards for the peacekeepers. Training is essential in order to ensure that peace personnel are ready and fully equipped with skills and knowledge to efficiently carry out the mandate and protect the local communities in post-conflict zones. The UN has already made efforts to improve the training process for peacekeepers by establishing training centers and implementing new training programs,<sup>42</sup> leaving room for further improvements. In addition, it is crucial for the UN to ensure that the training is relevant and up-to-date, taking into consideration the changing nature of conflicts and the threats faced by peacekeepers.

The UN can develop better training standards for peace operations by implementing a number of measures. There are numerous steps that could include in order to maintain an efficient training program such as conducting regular reviews

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<sup>42</sup> More information for the training programs are available at: <https://peacekeepingresourcehub.un.org/en/training>.

and evaluations of existing training programs<sup>43</sup> to identify if improvements are needed and ensure that the training is relevant and up-to-date; establishing a certain training curriculum<sup>44</sup> for all peacekeeping operations, in order to ensure that all peacekeepers receive consistent and high-quality training; conducting pre-deployment training<sup>45</sup> to peacekeepers before they are deployed in a particular mission, which would help them to better understand the local context and the cultural norms of the area where they will be working; developing special trainings<sup>46</sup> for different types of peacekeeping operations, such as peace enforcement, peace-building and peacekeeping with a robust mandate; integrating a specialized training<sup>47</sup> into the peacekeeping curriculum on human rights and their protection and promotion, protection of civilians, gender perspectives, and especially on sexual exploitation and abuse; encouraging the participation of experts in relevant fields such as International Human Rights Law and International Humanitarian Law; updating the training materials and resources, as well as encourage the incorporation of new technologies in peace operations; establishing a monitoring system and evaluate the performance of peace personnel<sup>48</sup> during and after a mission, identifying areas for improvement and make changes to training programs. It is essential to note that the peacekeeping training is a continuous process and it requires constant review based on experiences on the ground in order to adapt in the changing conditions of the field.

In this case, it should be mentioned that the training for reporting mechanisms of SEA should be improved as well and incorporate the above steps in its process with a view to a more victim-centered approach, confidentiality, non-discrimination, respect for gender, human rights, and dignity.<sup>49</sup>

In order to acquire, implement and keep these processes efficiently, UN can get the help of numerous organizations and individuals. The key partners that could assist UN for better training standards, without the list being exhaustive, are the

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<sup>43</sup> A/74/19, para.109; A/71/19, paras. 252 and 245.

<sup>44</sup> A/71/19, para. 246.

<sup>45</sup> A/71/19, paras. 63, 66, 81, 105, 133, 134, 245, 258, 373, 375-378, 385.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> A/74/19, paras. 41, 88, 90, 91, 146.

<sup>49</sup> A/74/19, paras. 32, 37, 38.

Member states of the UN that can provide valuable expertise on the training needs, as well as contribute to the funding and implementation of training programs; Regional organizations such as the European Union, the African Union, the NATO that can also play a critical role in peacekeeping training by providing specialized programs and support with funding and logistical assist; military and police institutions for training that can provide specialized training for peacekeepers on issues such as the use of force or human rights; NGOs can help by providing expertise on issues such as human rights, gender perspectives, protection of civilians, training materials or capacity building to the peacekeepers; civil society organizations can help on issues such as community engagement, local perspectives and cultural sensitivity; international experts in relevant fields such as International Human Rights Law and International Humanitarian Law can assist with specialized trainings and guidance on issues related to their expertise and develop training materials and evaluate the training program; and private sector companies can provide training on areas such as technologies and logistics and add new technologies in trainings and operations. It should be mentioned that UN has already been partner with many of these organizations and experts, but as mentioned above it should continue to develop and improve the training process and standards.<sup>50</sup>

#### **4.2. Deployment of female peacekeepers**

Apart from the development of better training standards, which is a continuous process, the inclusion of gender equality in peace operations is another step that would mitigate the issue of SEA.

According to Resolution 1325, the Security Council introduces the participation of women in peace operations and urges their increase in national, regional, and international institutions and mechanisms concerning the prevention, management, and resolution of conflicts.<sup>51</sup> It calls upon all parties to promote the participation of women as military and non-military personnel, to expand their roles and their contribution to conflict-related issues, and to design and implement gender-sensitive training for peace operations in order to reveal their gender-dimensions.<sup>52</sup>

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<sup>50</sup> A/75/19.

<sup>51</sup> S/RES/1325 (2000).

<sup>52</sup> Ibid, paras. 7,16.

Feminist scholars would agree that the impunity on SEA and its continuation, as noted above, are linked to gender relations of power. The Zeid report notes that the presence of women in the field would facilitate communications and cooperation with local communities and NGOs, as well as encourages the victims of SEA to report easier such misconduct and will discourage its appearance, leading to the elimination of the problem.<sup>53</sup> Resolution 2538 is a stand-alone resolution concerning the deployment of women in peace operations.<sup>54</sup> It encourages TCCs to increase the deployment of uniformed women in peacekeeping since it improves the effectiveness and credibility of UN peacekeeping operations and their legitimacy among the local communities.<sup>55</sup> However, up to date there is no study that has assessed how the deployment of women affects the environments in post-conflict areas (Huber, 2022, p. 3).

According to Simic, feminist researchers show that women who participate in the military tend to get influenced by the militarized and hypermasculine environment instead of changing it (Simic, 2010, p. 194). Simic notes that there are cases where female peacekeepers do not report their male colleagues, since in such unstable environments there is no difference between the genders, and local communities are reacting to their uniform and authority instead of their gender (Simic, 2010, p. 195). As many scholars agree, the introduction of female peacekeepers is probably aimed at something else, rather than to eliminate the issue of SEA.<sup>56</sup> Furthermore, the introduction of female peacekeepers reproduces the traditional gender roles, where women are ‘‘mothers’’ and represent something peaceful, caring, supportive whereas men represent something violent and abusive (Pruitt, 2013; Sion, 2008, p. 567). In addition to this statements, women peacekeepers are occupied with working positions that are more ‘‘feminine’’, instead of participating in the field in ‘‘male’’ positions. Simic notes that women in peace operations are occupied with positions in the medical and education field, as well as computer and legal branches, meaning that

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<sup>53</sup> A/59/710, para. 43.

<sup>54</sup> S/RES/2538 (2020).

<sup>55</sup> Ibid.

<sup>56</sup> There are theories that the UN tries to improve its status and legitimacy through the deployment of female peacekeepers instead of trying to combat SEA. In addition, many TCCs take advantage of female deployment and promote it in press releases and other media in order to demonstrate that they are trying to promote and support gender equality (Huber, 2022, p. 4; Simic, 2010, p. 197).

they are not present in the field in order to be seen by local communities and encourage local women and girls; they cannot fight the stereotypes and perceptions of local men; and they cannot go against the macho environments<sup>57</sup>, leading to the elimination of SEA (Simic, 2010, pp. 193-194).

As Karim and Beardsley suggest, the deployment of women in peace operations cannot be the only solution because it does not have much influence on the patriarchy and militarized masculinity in such environments; instead, they add the enhancement of norms such as gender equality and respect (Karim and Beardsley, 2016, pp. 103-104). They promote a more holistic solution in order to substantially mitigate the issue of SEA because, in this way, male peacekeepers would respect local communities and the ‘*pool of potential perpetrators*’ will be reduced (Karim and Beardsley, 2016, p. 104). Apart from the deployment of women in such operations, the inclusion of peacekeepers that have strong values and actually believe in gender equality will inherently mitigate the incidents of SEA and will promote higher values among local communities (Karim and Beardsley, 2016, p. 105).

### **4.3. Immunity status**

As it has been discussed before, immunity status is a factor that plays a critical role and affects the involvement of peacekeepers in illegal acts. Peacekeepers count on immunities, which protect them from any legal process for actions of misconduct while they are on duty. In general, immunity protects peacekeepers from any legal process or from being arrested in cases of cooperation with law enforcement. It is necessary for implementing, maintaining, and fulfilling peace and security, protecting and promoting human rights and the rule of law, and providing solutions to many socio-cultural problems.<sup>58</sup>

There are three types of immunities, such as the organizational immunity, the high-level immunity<sup>59</sup> and the functional immunity. According to Article 104 of the

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<sup>57</sup> According to Jeffreys, women in the military are double jeopardized because they are not only in danger from the enemy but also from their colleagues (Jeffreys, (2007).

<sup>58</sup> UN General Assembly, (1946), *Convention on the Privileges and Immunities of the United Nations*. Available at: <https://www.un.org/en/ethics/assets/pdfs/Convention%20of%20Privileges-Immunities%20of%20the%20UN.pdf>.

<sup>59</sup> The categorization of immunities was adopted by the Code Blue Campaign. For more information see: PRIMER: PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, (2018), *Code Blue*

UN Charter, organizational immunity is provided to the UN while it is on the territory of any of its Member States in order to implement and exercise its purposes and functions until their fulfillment. The UN, its assets, and its movable and immovable property are immune in the territory of each Member State and cannot be subjected to “...search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action..”<sup>60</sup> In addition to this, UN has fiscal exemptions and exemptions from custom duties, prohibitions, and restrictions on exports and imports.<sup>61</sup> The high-level immunity is granted to Representatives<sup>62</sup> of Members of principal and subsidiary organs of the UN, officials of the UN and experts on missions for the UN and provides them with the same immunities as diplomatic envoys and it also applies to their children and spouses.<sup>63</sup> This immunity remains active even when the individuals concerned are no longer in their positions.<sup>64</sup> Functional immunity is granted to UN personnel while they are on duty and exercise their functions for the purposes of the UN. The military and non-military personnel are held unaccountable for actions or for things they have said during their work duties. This means that individuals can perform their functions independently and without the fear of harassment, intimidation, or undue influence from the host State’s authorities; they are shielded under the legal concept of international law concerning the limitation of jurisdiction to foreign entities; and they are only subjected to the jurisdiction of their own States (Jennings, 2017).

According to the Convention on Privileges and Immunities of the UN, the SG has “...the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived

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Campaign Available at:  
[https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5ab5436c03ce648650016c39/1521828716387/Code+Blue+Campaign\\_Primer\\_Privileges+and+Immunities+of+the+United+Nations.pdf](https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5ab5436c03ce648650016c39/1521828716387/Code+Blue+Campaign_Primer_Privileges+and+Immunities+of+the+United+Nations.pdf).

<sup>60</sup> UN General Assembly, (1946), *Convention on the Privileges and Immunities of the United Nations*, para. 3. Available at: <https://www.un.org/en/ethics/assets/pdfs/Convention%20of%20Privileges-Immunities%20of%20the%20UN.pdf>.

<sup>61</sup> Ibid, para 7.

<sup>62</sup> “In this article the expression “representatives” shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.” Ibid, Article IV, para. 16.

<sup>63</sup> Ibid, Article V, para. 18 (d).

<sup>64</sup> Ibid, Article IV, para. 12 (d).



*without prejudice to the interests of the United Nations.*''<sup>65</sup> However, even after waiver, the individuals concerned remain under the exclusive jurisdiction of their own States, meaning that they can only be prosecuted by the Governments of their own States and not by the State they are deployed to, and there should be sufficient credible evidence of the offense that happened abroad (Ladley, 2005, p. 84; Genovese, 2018, p. 631). Nevertheless, there are cases where UN did not proceed with the waiver of immunity, due to the threats of TCCs that they would withdraw their peacekeepers if UN accused them of any misconduct<sup>66</sup> or even after waiving immunity, the repatriated peacekeepers were not prosecuted either because the crimes were committed abroad or because the domestic mechanism does not have the jurisdiction to prosecute individuals for crimes committed on UN peace operations (Ladley, 2005, p. 86; Genovese, 2018, p. 629). On the other hand, there are cases where peacekeepers were prosecuted<sup>67</sup> for sexual misconduct, and either the victims were vindicated<sup>68</sup> or it has been proven that the allegations were unsubstantiated.<sup>69</sup>

As it can be understood, immunity status is a valuable tool that provides the UN and its personnel – and all international organizations that cooperate with UN – the ability to perform their functions and remain unbiased in unstable environments

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<sup>65</sup> Ibid, Article V, para. 20 and Article VI, para 23.

<sup>66</sup> For example, Rwanda threatens to withdraw all its troops from Darfur due to accusations of war crimes in Congo. Read more at: Rwanda threatens to withdraw peacekeepers from Darfur over a UN report. (2010), *France24*. <https://www.france24.com/en/20100831-rwanda-threatens-darfur-peacekeeper-withdrawal-un-report-war-crimes>.

<sup>67</sup> There are cases where individuals and groups tried to prosecute the UN for crimes committed either by its personnel or by administrative actions but failed due to organizational immunity. See, among others, *Georges et al v United Nations et al*; *Stichting Mothers of Srebrenica and Others v. the Netherlands*; *Manderlier v. Organisation des Nations Unies et l'Etat Belge*.

<sup>68</sup> For example, among others, in 2008, nine UN peacekeepers from Uruguay were sentenced to prison terms for SEA against a minor in the DRC. Read more at: UN, (2017), *DR Congo: UN officials hail landmark convictions, life sentences in Kavumu child rape cases*. Available at: <https://peacekeeping.un.org/en/dr-congo-un-officials-hail-landmark-convictions-life-sentences-kavumu-child-rape-cases>; In 2011, four UN peacekeepers from Uruguay were sentenced to prison for raping a Haitian teenager in Haiti. Read more at: UN, (2011), *Uruguay to probe alleged sexual misconduct by its UN peacekeepers in Haiti*. Available at: <https://news.un.org/en/story/2011/09/386122>.

<sup>69</sup> According to the SG's reports, there are cases that are unsubstantiated. The reports are available at: <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/secretary-generals-reports>.

and without the obstacles that may arise since they are free from any legal jurisdiction against them. However, there are cases where this immunity is used in order to exempt perpetrators from their responsibilities and keep them unaccountable for practices that may violate the human rights of local communities. The fact that domestic courts of the host States have not the jurisdiction to take not only international organizations, but also the alleged personnel to court may consist a breach of international obligation in order to protect and redress the victims. Waiving the immunity is an option that permits further investigations of the allegations, but the TCCs have legal jurisdiction over their personnel, meaning that there are cases where justice has not been served.

#### **4.4. Jurisdiction over peace personnel**

Taking into consideration the above information, it is important to find and make clear the responsible and efficient agent to investigate and prosecute the alleged individuals.<sup>70</sup> As it has been noted before, TCCs bear the responsibility for prosecuting their nationals according to legal agreements such as MoU<sup>71</sup> and SOFA.<sup>72</sup> Both agreements do not demand TCCs have criminal codes outside their territory, extraterritorial criminal laws, or the obligatory responsibility of exercising their jurisdiction outside their territory. These are some of the reasons that – as noted above – TCCs do not prosecute their alleged nationals. Another factor is that their status as TCCs would be degraded if their nationals were indeed perpetrators of SEA and their position in troop contribution may be affected. Some TCCs are participating in UN

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<sup>70</sup> Concerning only the ‘peace babies’ cases and the identification of their fathers, as well as the redress of their mothers that have been abandoned, there is a suggested solution that may help solve the issue and has no relation to judicial proceedings. According to Ferstman, blood and medical tests can help and show matches between children and fathers, while having DNA tests and a database, would provide an easier path for children to claim their rights and for mothers to get reparation and support for housing and educating their peace babies. However, this proposal is still voluntary, and there has been limited progress since the coercion of peacekeepers to participate in it would infringe on their rights to privacy. In addition, in some cases, DNA tests are inaccessible and expensive in some countries, and some countries do not have laws allowing for cross-border recognition of paternity. See more at: REDRESS, *Sexual Exploitation and Abuse in Peacekeeping Operations: Improving Victims’ Access to Reparation, Support and Assistance*, Online, September 2017, pp. 39-41. Available at: <https://www.refworld.org/pdfid/59c383034.pdf>.

<sup>71</sup> A/61/494, Article 7, quinquies.

<sup>72</sup> A/45/594, Article 47 (b).

operations because they have financial motivation and national economic benefits and because they improve their standing and influence in the international field (Avezov, 2014, pp. 259-260). In addition, according to Zeid Report, they are avoiding public outcry by not admitting the wrongdoings of their nationals.<sup>73</sup> Another reason could be that evidence and witnesses are located in the host State, meaning that TCCs face practical difficulties and should overcome them. The trials take place in an area far away from the crime scene, with extra costs and logistical obstacles both for the transfer of investigators and the transfer of witnesses and evidence that may not be accepted by the domestic court due to domestic procedural laws.<sup>74</sup>

After all these, the TCCs should not be the only option to investigate and prosecute the alleged national because not only they do not exercise their obligations in an efficient way but also because they do not solve the issue holistically, and as time shows, the SEA still pertains in the field.

Should the host State be responsible for these processes? According to International Law, a State has the jurisdiction to investigate any crime that has been committed in its territory. However, MoU and SOFA provide TCCs with this obligation and remove this right from the host State. The jurisdiction of host States in such cases could be an option because the host States would have the will and motivation to investigate and prosecute perpetrators for SEA crimes in order to protect the rights of their nationals and redress the victims of local communities in their territories. For practical reasons, it would be easier to exercise investigations in the crime area, because witnesses and evidence would be accessible, and potential costs and time would be reduced. Finally, SEA perpetrators would be held accountable under one set of rules in the territory where a peace operation is deployed, which could provide a holistic solution since all peacekeepers with different nationalities would be prosecuted under the same criminal law. However, peace operations are deployed in post-/conflict areas within an unstable environment. Host States are not able to support such processes, and the rule of law is damaged, something that may lead to a dysfunctional justice system and unfair trials.

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<sup>73</sup> A/59/710, paras. 66-67.

<sup>74</sup> A/66/174, para 35.

In the context of international crimes, there is an autonomous Court that differs from ad hoc tribunals and other similar courts that were established by UN frameworks in order to deal with specific issues and had a limited mandate and jurisdiction.

In general, the ICC is a permanent international court based in The Hague and established under the Rome Statute, in 2002, in order to ‘...investigate, prosecute and try individuals accused...’ of crimes that concern the international community, such as genocide, war crimes, crimes against humanity, and the crime of aggression.<sup>75</sup> The ICC prosecutes only individuals, not groups or States, and only for the aforementioned crimes. Its jurisdiction is limited on the territory of its State Parties or on individuals who are nationals of a State Party and it can only exercise its functions when the State concerned does not, cannot or unwilling to investigate, prosecute and try individuals alleged to have committed the crimes above.<sup>76</sup>

According to the Rome Statute, sexual violence is recognized as a crime against humanity, a war crime, and a form of genocide when it is committed in order to destroy a particular group.<sup>77</sup> Since there are cases where the TCCs deny prosecuting SEA committed by their nationals, the ICC can start the investigation or prosecution for the alleged crimes or pressure the TCCs to start these processes on their own will and comply with their obligations. Another advantage is that there is one set of rules applied by the ICC and investigations and trials will only follow the rules of the Court. Additionally, the ICC is an autonomous judicial institution, meaning that it would be impartial in such cases, instead of trials happening by the TCCs or host States that may be biased.

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<sup>75</sup> International Criminal Court, (2020), *Understanding the International Criminal Court*. Available at: <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>.

<sup>76</sup> Ibid.

<sup>77</sup> The ICC has not adopted the UN definitions of SEA in Rome Statute, but many acts of SEA are included in the core crimes of the Court. In addition, Resolution 1820 recognizes rape and other forms of sexual violence as war crimes, crimes against humanity, and acts of genocide (S/RES/1820, para. 4). However, concerning the crime of genocide, though SEA is a widespread issue and causes harm to local communities, it is unlikely to be committed with the intent to destroy a group of a local population.

However, the jurisdiction of the ICC applies only to the State Parties of the Rome Statute and to crimes that are subject to the definitions of the Court. Another disadvantage is that the Court has complementary role and only acts when the State of the alleged individual does not, cannot, or unwilling to investigate and prosecute the individual concerned. This means that in some cases the TCC can exercise its obligations in an ineffective way, in order to prevent the involvement of ICC in the case. Furthermore, the ICC cannot try individuals in their absence, meaning that it needs the cooperation of the TCC to surrender the individual concerned.<sup>78</sup> In addition, there is the opinion that since SEA is not recognized as a systematic or wider act to repress, control, or destroy local communities, it may not be considered an international crime (Freedman, 2018, pp. 977-978). This opinion is based on Article 17 (1) (d) of the Rome Statute, where it is noted that if the case is not of adequate gravity, then the Court will not act.<sup>79</sup>

After all these, should the jurisdiction rest with a certain judicial agent or with cooperation between the parties, namely the UN, TCCs, and host States? UN cannot act separately as a Court for such cases, since the International Court of Justice (ICJ) settles legal disputes between States - and only - and provides authoritative interpretations of international law.<sup>80</sup> Therefore, the role of UN to be left is in waiving the immunity of its peacekeeping personnel. TCCs as noted before – though in many cases they do help in the investigation and prosecution of alleged nationals – have issues concerning domestic and extraterritorial criminal laws; do not exercise their obligations due to the fact that their international status would be at stake; and the trials would take place far from the crime scene. Host States are unable to do so due to the post- conflict context and the probability of an unfair trial.

The creation of a new special court to address SEA by peace personnel would not be a solution because it could face the same problems as the ICC, especially given that many TCCs may not be parties of it and would not accept its jurisdiction over their nationals (Ferstman, 2013, p. 9). Another proposal is the creation of an

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<sup>78</sup> Rome Statute, Article 98 (2).

<sup>79</sup> Rome Statute, Article 17 (1) (d).

<sup>80</sup> UN, (no date), *International Court of Justice: The Court*. Available at: <https://www.icj-cij.org/court#:~:text=The%20Court's%20role%20is%20to,Nations%20organs%20and%20specialized%20agencies>.

independent special court mechanism that would be funded by Member States through the peacekeeping budgets. This special court mechanism would have full responsibility for alleged personnel at every step of the process, namely from accepting report of SEA to sentencing those who are guilty.<sup>81</sup> Another suggestion would be the amendment of the MoU model and the inclusion of more strict obligations and requirements. This could be supported by adding sanctions and consequences to the parties that do not fulfill their obligations. However in all suggested solutions above, there is the possibility that some TCCs may not participate any more in peace operations and the missions will not have enough personnel in order to be effective.

#### **4.5. Victims' rights advocate for SEA**

According to a report<sup>82</sup> of the SG in 2017, concerning special measures for protection from SEA, a new approach has been introduced that is different from other practices that aim to mitigate the issue. Victims' rights advocate (VRA) is a new role that will work with local authorities, TCCs, human rights organizations, NGOs and CSOs to ensure that victims' rights are protected and full effect of domestic laws is applied during the whole judicial process.<sup>83</sup>

Connors<sup>84</sup> mentions that in DRC and CAR, the VRA have assisted victims of SEA get redress, medical, and psychosocial support; ensured that the victims are treated with respect and dignity; kept the victims' identities secured and under confidentiality; tried to restore victims' trust to UN; tried together with other UN entities and human rights organizations to identify gaps in victim support processes; and realized awareness-raising activities to prevent SEA (Connors, 2022, pp. 62-65).

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<sup>81</sup> A Practical Plan to End Impunity for Peacekeepers Sexual Abuse, (2016), *Code Blue Campaign*. Available at: <https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/588289db2994ca3d59b93c38/1484949980156/FINAL+Special+Courts+Mechanism+-+Updated+January+2017.pdf>.

<sup>82</sup> A/71/818.

<sup>83</sup> *Ibid.*, paras. 28-29.

<sup>84</sup> Jade Connors has been the VRA for victims of SEA since 2017. The author decided to include in this research her opinions on her position, due to the fact that she comments on both the support provided to victims and the challenges she faces. It can be seen that, later in the same chapter, the Code Blue Campaign reinforces these challenges and adds opposition trying to explain why this new approach cannot restore justice for victims.

However, she comments on some challenges for this new role since it is still unknown outside the organization: it is difficult to support all victims and provide appropriate assistance due to poor human and financial resources; victims are still afraid of the confidentiality issue and the stigma and discrimination that follow them in their communities; and, finally, there are issues with the monitor and the assessment of the quality of the support provided to victims (Connors, 2022, pp. 65-66).

The Code Blue Campaign agrees with the challenges of this new approach and adds more arguments concerning the conflict of interest posed by this new role between the UN and the victims of SEA by UN personnel.

First of all, the conflict of interest is based on the fact that VRA is a UN entity and reports to UN, and VRA would not put the interests of the victim above the interests of its organization.<sup>85</sup> Another practical issue is that there is no ‘‘Bill of Rights’’ that states who are considered victims of UN sexual exploitation and abuse, what rights they are entitled to, or which is the time framework regarding the duration they can access their rights, as well as there is not a mechanism that can challenge violations of rights by UN processes.<sup>86</sup> Furthermore, the case of jurisdiction is a problem in this new approach. Though VRA is presented as a victim-centered approach mechanism, in cases of SEA there is also a perpetrator, who is immune from any legal process while on duty, and after the waiving of immunity, the TCCs are responsible for their nationals, meaning that the burden of prosecution falls again upon the TCCs.<sup>87</sup>

In short, as it has been presented from the above information, there is room for improvement concerning the training process that can help both the amelioration of practices among peacekeepers, the prevention of SEA, and the inclusion of a gender equality environment. This equality can be supported by the deployment of more women in peace operations, and, especially their introduction in the field. They can

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<sup>85</sup> The UN’s Victims’ Rights Advocate: A Hindrance to Justice, (no date), *Code Blue Campaign*, p. 2, para. 2. Available at: [https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5b3b89150e2e724afe2a0ad3/1530628373923/Code+Blue\\_UN+Victims%27+Rights+Advocate\\_June+2018.pdf](https://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/5b3b89150e2e724afe2a0ad3/1530628373923/Code+Blue_UN+Victims%27+Rights+Advocate_June+2018.pdf).

<sup>86</sup> *Ibid.*, p. 3, para. 2.

<sup>87</sup> *Ibid.* pp.3-4, para. 3.

promote respect for women both among local people and among peace personnel, as well as encourage them to take on duties in order to help the community or to report more cases of SEA. However, the allegations may not be addressed anywhere since the TCCs have jurisdiction over their nationals, creating obstacles in the investigation of allegations and the prosecution of perpetrators. The introduction of VRA may motivate victims to start reporting cases of SEA, and the creation of a victim-centered approach can support the promotion and protection of their rights, but at the same time, there are challenges with the main agent being the UN itself.



## 5. Conclusion

In summary, this paper argued that SEA is an issue with many aspects, and despite the UN's efforts to prevent and address it, reports show that it still occurs, causing harm to local communities and damaging the legitimacy and credibility of peace operations. SEA poses a significant challenge to peacemaking, peacebuilding and peace enforcement operations that try to promote and protect human rights and establish the rule of law in post-conflict areas.

SEA concerns sexual violence in post-/conflict environment, meaning that the perpetrator belongs to military and non-military personnel sent to support communities in need and the victim is an individual from a group that requires help. However, as it has been explained before, the victim can be a member that belongs to humanitarian workers, due to the "vengeful stance" of local communities. Apart from the many types of perpetrators, SEA has many types itself, where each type has its own unique characteristics, but at the same time there are blurry lines between them. This means that one type can overlap the other. Their unique characteristics are based on consensual or not-consensual relationships; on sex intercourses or sexual misconduct; and on private purposes or on the profit derived from such practices. Human agency has an important role in the categorization of SEA because, in the first place, based on it, people can understand if it is a crime and a terrible act, a relationship with feelings, or just a way to release the pressure of the situation. In cases with consent, SEA is no longer abuse or exploitation between perpetrators and victims but a choice between individuals based on their free will. Of course, in cases where there is transactional/survival sex, it is difficult to distinguish "free" consent. However, according to the UN's zero-tolerance policy and the incomplete definitions provided concerning sexual violence, the emotional part of local people and relationships based on feelings are still unacceptable.

The UN's response to the first SEA allegations was inappropriate, leaving the door open for perpetrators to continue such horrible practices. The "*boys will be boys*" attitude signifies ignorance about the issue or the unworthiness to deal seriously with it in order to mitigate its appearance in the future. Although future allegations were confronted with prosecutions and repatriations, the UN failed to protect the human rights of women, because it used broad definitions of sexual

violence and ignored factors such as consent. It is certain that SEA incidents started earlier and that the issue has more background, but factors such as stigma, sexist patterns, and the undermined legitimacy of the reporting mechanism were pulling the victims and witnesses away.

The “*boys will be boys*” attitude perfectly reflects the reasons behind SEA. The cultural and economic inequalities based on gender relations between UN personnel and local people, as well as the UN policies and practices against SEA, are the roots of this sexual violence. Hegemonic and military masculinities that create these unequal power dynamics and the feeling of “superiority” against people in need are the main factors for implication in SEA. Additionally, the UN’s reaction to the first allegations, pretending that sexual violence was an inherent characteristic of these areas, together with untrustworthy reporting mechanisms, fueled the issue. The immunity status granted to UN personnel has an important role by providing a feeling of security to peacekeepers not only while they are serving their duties and obligations but also while they get into SEA, due to the fact that they are immune from any kind of prosecution until the immunity is waived by the UN.

The impact of SEA is significant not only in the lives of the people affected but also for the communities, both local and international. Individuals have their rights infringed and their physical and psychological health damaged. Not only are the victims of SEA stigmatized and marginalized, but it also affects their peace-babies in the same way, posing a barrier to the provision of fundamental rights. Furthermore, local communities are getting influenced by the sexualized culture of impunity, continuing the devastating environment of conflict in the post-conflict area. Scholars add that the economies of these communities are affected as well because sex industries and criminal networks flourish in these areas. Finally, the partial inaction of the international community to address and challenge this issue undermines its legitimacy and the success of peace operations. SEA creates mistrust between UN personnel and local communities and an area of turbulence, leading to the failure of the outcome and the completion of the mandate.

The handling of SEA by the UN until this day has not been very effective due to the fact that a large number of allegations of SEA are still present in peace operations. The research categorizes three ways to address SEA efficiently: an

approach based on peacekeepers, on perpetrators, and on victims. Regarding the peacekeeping-centered approach, the training standards of peace operations should continue to be developed, maintain a gender-equality perspective, and develop a human rights curriculum that can teach peace personnel the values of respecting people in need and the importance of their duty. The inclusion of female peace personnel on the field can promote gender equality and encourage local women and girls to report SEA and take on duties to help the peace process. Scholars argue that the UN and States are using the deployment of female peacekeepers in order to demonstrate a gender-respected profile because, on the one hand, their number on the field is small and on the other hand, they are usually put in positions away from the field as non-military personnel. Studies reveal that female military personnel are usually influenced by masculinities on the field and acquire ‘male’ characteristics and attitudes. However, even the small number of female peacekeepers together with a gender-equality perspective that should be included in the training standards of the UN and the presence of men who have the same training, lead to the amelioration of peace operations and their outcomes. The perpetrator-centered approach concerns the issue of immunity, its waiving, and the jurisdiction over peace personnel. The immunity issue is a controversial one that ensures the protection of peacekeepers and, at the same time, the protection of perpetrators of SEA. The UN should be quick concerning the evaluation of allegations and proceed rapidly in the waiving of immunity. However, even after the waiving of immunity, only the TCCs have jurisdiction over their nationals, and in some cases, they remain unpunished and without penalties in their home countries. The international community cannot provide help in such cases of impunity either because it does not have jurisdiction over the TCCs or because it does not have any interest on the specific issue. Finally, the UN has introduced in the last few years a victim-centered approach mechanism that helps victims during all the legal processes and tries to redress them. This mechanism is the only victim-centered approach to date and can improve the UN’s status in these areas. Nevertheless, this mechanism is new, and there are still practical issues as well as poor human and financial resources, making it incomplete and leaving many victims outside its boundaries.

Therefore, after the short evaluation of the findings of this research, it is time to give answers to the main questions that have been posed in the introductory part and that underpin the rationale of this research.

What does SEA mean? SEA is a complex issue with many different aspects. It is the sexual violence committed by UN peacekeepers in post-/conflict environments that prevails during peace operations. Though peacekeepers are deployed under high ideals and practice their duties under specific principles, respecting the human rights law, they end up doing terrible acts, increasing injustice in these areas even more. SEA may have different types that overlap each other, but the main point is that it does harm to local communities, which instead of receiving help, are living in an unfortunate environment. It is a manifestation of patriarchy that is based on masculinities and the superiority/inferiority model, which is interpreted as the UN peacekeepers and the people in need. SEA is one of the reasons that the legitimacy and credibility of the UN and international community are decreasing, and in many cases, people do not count on them for support.

Has it been given due importance? No, SEA has not received the appropriate attention. Even from the first reports for SEA, the UN did not address the issue in a serious manner and engaged in practices that violate the human rights of local people, especially women. As can be seen by the definitions provided by the UN, they are broad explanations of sexual violence and all the crimes connected with it, disregarding the agency of people that want to get into sexual relationships for material benefits, as well as the emotional factor and the relationships that may be born between UN peacekeepers and local people based on feelings. According to its zero-tolerance policy, the UN '*strongly discourages*' such relationships, ignoring the human rights and fundamental freedoms of people. Furthermore, TCCs ignore the issue and partially proceed with prosecutions because, among others, they may indeed want to bring justice and redress the victims; they may be afraid of the public outcry and the degradation of their international status; or they are pressured by NGOs, CSOs, and human rights organizations.

Does the international community try to eliminate SEA? Partially yes, the international community tries to eliminate SEA. Though SEA has not yet been given due importance, the UN has realized over the years that SEA should be mitigated in

order to help local communities and achieve better outcomes of peace operations. Through the development of different policies – though sometimes insufficient – and the continuous improvement of peacekeeping training, the UN aims to mitigate the issue. In addition, the promotion and deployment of female peacekeepers with the appropriate training – even though some scholars believe it is a pretense – creates an environment that is based on gender equality and the respect of others. The VRA is a victim-centered mechanism that may encourage more victims to report SEA cases, but the UN should solve practical issues in order to stop being dysfunctional. The reason that the answer to this question was “partially yes” is because of the TCCs that try to avoid the prosecution of their nationals, creating an environment of impunity and decreasing the legitimacy and credibility of the international community as a whole. There are international organizations such as the ICC that do not have jurisdiction over many States that provide peacekeepers in peace operations, making it difficult to prosecute the perpetrators. On the other hand, the host State finds it almost impossible to deal with investigations and allegations of SEA due to the fact that it is still in an unstable condition and there is still injustice. As a result, TCCs that are responsible for the prosecution of their nationals, do not address SEA consistently, ignoring the redress of the victims and the elimination of the issue. Should the promotion of human rights and gender equality in such States start to get more attention? Is it possible for the UN to develop another way to determine the jurisdiction of perpetrators without having an impact on the human resources of peace operations?

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