



# MASTER THESIS

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„The impact of human rights law and internal regulation in Sexual Exploitation and Abuse cases in UN field missions.“

verfasst von / submitted by

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Pledge of honesty : “On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.”  
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*Abstract: This thesis is about sexual violence in peacekeeping missions of the United Nations. It analyzes the claim that such violence is on the decrease by researching the different factors that led to this evolution: international human rights law concretely applied to military peacekeepers on the ground and internal regulations of the U.N. applied to civilian peacekeepers in the missions.*

*The main argument is that although the prosecution of peacekeepers is complicated by immunity and limitations concerning jurisdiction, human rights norms developed within the United Nations as well as internal rules, national implementation of international norms and implementation of U.N. resolutions make a difference to address this issues in the field missions.*

*Zusammenfassung: Diese Dissertation befasst sich mit sexueller Gewalt in Friedenssicherungsmissionen der Vereinten Nationen. Sie analysiert die Behauptung, dass diese Gewalt abnehme, indem sie die verschiedenen Faktoren untersucht, die zu dieser Entwicklung führten: das internationale Menschenrechtsgesetz, das konkret auf militärische Friedenstruppen zu Land angewendet wird und interne Regelungen der Vereinten Nationen, die für zivile Friedenstruppen in den Missionen gelten.*

*Das Hauptargument ist, dass, obwohl die Verfolgung von Friedenstruppen durch Immunität und Einschränkungen der Gerichtsbarkeit erschwert wird, sich die innerhalb der Vereinten Nationen entwickelten Menschenrechtsnormen sowie internen Vorschriften, die nationale Umsetzung internationaler Normen und die Umsetzung von UN-Resolutionen zu Land durch Gesetze, Verhaltensregeln, Trainings und Interessenvertretung von NGOs von einander unterscheiden.*

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# Introduction

In the past years, sexual abuse and exploitation (SEA) committed by peacekeepers of the United Nations (U.N.) has often made the headlines, with seemingly no way to resolve the problem due to the functional immunity of peacekeepers and a global climate of impunity surrounding this issue.

However, there is a lot of misunderstanding surrounding the problem, notably on what exactly is forbidden and who is responsible to prosecute the different types of personnel of the United Nations.

The first important distinction to make is the one between military peacekeepers and civilian personnel, encompassing police, consultants and U.N. Volunteers.

Military peacekeepers are under the exclusive jurisdiction of their home countries, meaning the only way they could be criminally prosecuted is by their own State. The problem is that this occurs rarely, for several reasons: it might be difficult for the State to investigate on facts that happen abroad, or in the case of sexual exploitation (prostitution), it might be legal in their home State.

Civilian staff in field missions are liable under a different legal regime. Their immunity can be waived by the Secretary General and they are subject to U.N. disciplinary measures which were created by the Office of Internal Oversight Services (OIOS), the institution was set up in 1994 which is often referred to as the “internal watchdog” of the United Nations<sup>1</sup>, as well as to the jurisdiction of the host country if their immunity is waived.

This thesis explored the intersection between the issue of SEA in peacekeeping missions and the history of the United Nations. Since the first peacekeeping mission established in 1948, the United Nations has developed an extensive human rights framework and became more and more vocal about sexual violence in conflict but also developed a more rigorous internal framework and measures to be adopted in the field. While evolution in the human rights framework impacts

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<sup>1</sup> [UN News: Swedish auditor nominated to lead UN internal watchdog office, 2005](#)

military peacekeepers as I demonstrated in this thesis, the internal framework impacts the civilian staff.

The OIOS claims that there is an overall decline of SEA in the field missions. The aim of this thesis was to analyze why that might be the case.

# Research Questions

In the 2015 report the Office of Internal Oversight Services (OIOS) observed a general decline in Sexual Abuse and Exploitation (SEA) cases in UN Peacekeeping missions. My main research question is therefore:

- 1. How can one explain the alleged decline in the number of cases of SEA in UN Peacekeeping missions since the creation of the United Nations?**

Sub research questions:

2. Has the work of the OIOS impacted the number of SEA cases in UN peacekeeping missions since it became clear that SEA was a prerogative of the Office in 2005?
3. Has the legal evolution of sexual violence impacted the number of cases?

There is an exception to the general decline of SEA cases brought up in the 2015 report: the missions in the Democratic Republic of Congo, Liberia, Haiti and Sudan (MONUSCO, UNMIL, MINUJUSTH and UNMIS) still have a high number of cases. As a sub research question, I want to explore the reasons why this is the case.

4. Why has the number of cases in MONUSCO, UNMIL, MINUJUSTH and UNMIS not declined?

# Outline

The first chapter deals with the Human Rights framework and shows the evolution within the human rights law framework of the United Nations on sexual violence from 1945 to nowadays as well as the evolution of the mentality of the international community in general regarding the issue. Until the 1990s, the international community did not address the topic of sexual violence in peacekeeping missions. Chapter I examines the outcomes of the human rights conferences and the main actors which were instrumental to the evolution of mentalities regarding sexual abuse and exploitation in conflicts. This change of mentality was then translated into legal changes at the international and national level. The case studies included in this chapter are Liberia (UNMIL mission) and the Democratic Republic of Congo (MONUSCO mission). These two were chosen in order to assess if there has been an evolution on the ground in implementing changes in relation to the human rights framework.

The second chapter analyzes the internal framework of the United Nations and the development of rules preventing the staff of the United Nations to engage in SEA. In this chapter, the history of the internal framework of the United Nations was explored, through the work of the OIOS and through the measures taken by the Secretary General. This chapter also includes the most recent work of the OIOS. Chapter two refers to the, MINUJUSTH, the mission based in Haiti and the measures that were taken in the field to address this issue.

# Literature Review

## 1. Human Rights: the ideology guiding the United Nations.

In this thesis, human rights refer to International Human Rights Law and the norms of human rights law applicable to the United Nations system, and not the general human rights ideology or ideals guiding the action of the United Nations. This includes human rights treaties such as the Universal Declaration of Human Rights (1948), the International Covenants (1966) and the Convention on the Elimination of Discrimination Against Women (1979) among others.

The human rights framework includes the work of bodies created : as an example, the United Nations High Commissioner for Human Rights was created by the Vienna Declaration and Programme of Action in 1993 adopted by the General Assembly<sup>2</sup>. Another example is the United

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<sup>2</sup> United Nations, "Vienna Declaration and Programme of Action", (1993): §18

Nations Human Rights Council which was created in 2006 by the UNGA Resolution A/RES/60/251. Reports from these institutional bodies are used alongside human rights conventions. Finally, resolutions of the Security Council and in particular UNSC resolution S/RES/1325 on Women, Peace and Security was used, regarding its implementation in field missions.

## **1.1 Dumberton Oaks proposals, San Francisco Conference and Universal Declaration of Human Rights**

The Dumberton Oaks, the San Francisco Conference and the history of the Universal Declaration of Human Rights shows that human rights was not a priority of the United Nations at its creation. Since the prevention of sexual abuse and exploitation is a human rights issue, this shows us that the issue was far from being a priority at the time. Furthermore, it is interesting to dive into the history of the creation of the United Nations in the context of colonialism and to reflect on this topic since the colonial legacy is considered as a cause of sexual abuse in field missions (see 1.4).

Human rights law has not always been of the priorities of the United Nations. This is a conclusion one can draw from taking a close look at the conferences that gave birth to the organization. One notable example is the Dumbarton Oaks Conference (1944), which was the first important step in the creation of the United Nations. The conference happened within the context of the Second World War and the Allies were committed first and foremost to winning the war. They drafted the declaration with the aim of creating a “general international organization<sup>3</sup>” after the war which would be a more effective successor to the League of Nations, which had obviously failed to uphold international security. The structure of this new organization was laid down in Washington D.C. In a first phase (August 21 to September 28 of 1945), only the Big Three, that is, the United States of America (U.S.), the United Kingdom and the Soviet Union, discussed the new world order. In a second phase (September 29 to October 7 1945), China was included in the talks. The outcome of the discussions is known as the Dumbarton Oaks Proposals. As Normand and Zaidi explain, the talks were dominated by the United States and they were concerned only with peace and security and had little interest for human rights<sup>4</sup>.

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<sup>3</sup> [Yearbook of the United Nations, "Chapter E: The Dumbarton Oaks Conversations" \(1946\): 4](#)

<sup>4</sup> Normand, Roger, and Sarah Zaidi, *Human Rights at the UN : The Political History of Universal Justice*, (Indiana University Press, 2008), 108

Human rights are not mentioned in the stated purposes of the organization or in the principles that States must abide by. The term 'human rights' is only mentioned briefly in Chapter IX in relation to international economic and social co-operation and in a reference to Roosevelt's speech on the four freedoms<sup>5</sup>: "the Organization should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms<sup>6</sup>."

Mazower argues that although this clause was added to please the United States., the States involved were convinced it would not have any effect<sup>7</sup>. Normand, Zaidi and Mazower argue that this mention was added because American leaders feared a backlash at the domestic level if they did not incorporate a human rights clause after the horrors of the war. According to Mazower, the American people did not want the U.S. to fall back into isolationism after the war. \_Nevertheless,the United States did not want human rights to be legally enforceable in fear that it would contradict their own interests.

Further developments are linked to the San Francisco conference (1945), which aimed at drafting the United Nations Charter. The conference confirmed that the United States. would dominate the stage of the organization. Religious Non Governmental Organizations (NGOs)<sup>8</sup>, although they did not have the same leverage and public recognition as today, were invited to the conference by the United States. According to Normand and Zaidi, NGOs shifted the position of the UnitedStates to include human rights in the United Nations Charter, especially Jewish and Christian groups who had the most leverage following the atrocities of the Holocaust<sup>9</sup>. This development marks the beginning of NGOs lobbying for human rights, which became an important factor in the development of Sexual Abuse and Exploitation norms (see Chapter I). The first important normative development in international human rights law was the drafting of the Universal

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<sup>5</sup> [Franklin D. Roosevelt, "State Of The Union Address: 'the Four Freedoms'" \(1941\)](#)

<sup>6</sup> [Dumberton Oaks Proposal, "Chapter IX Section A §1", \(1946\)](#)

<sup>7</sup> Mazower, *The Strange Triumph of Human Rights*, Cambridge University Press, *The Historical Journal*, 47, 2 (2004): 387

<sup>8</sup> The term NGO itself was coined in 1945 to distinguish the Untied Nations from those private organizations.

<sup>9</sup> Normand, Roger, and Sarah Zaidi. *Human Rights at the UN : The Political History of Universal Justice*, Indiana University Press, 2008: 128

Declaration of Human Rights (UDHR) in 1947 and 1948. The UDHR was only a first step in the creation of a legal human rights framework.

The Convention on the Prevention and Punishment of the Crime of Genocide directly followed in 1948. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force in 1966, while the structure of the United Nations changed to incorporate human rights. The Human Rights committee, which is specifically in charge of matters relating to the Covenants, was created. Similarly, the United Nations Human Rights council, established in 2006, which replaced the UN Commission on Human Rights, is in charge of the Universal Periodic Review. This unique mechanism by which States submit a report on the human rights situation in their countries which is then reviewed by the United Nations.

After the creation of the United Nations, human rights slowly became an essential part of the work of international organizations: a lot more than for the League of Nations, the work of the United Nations started to be seen as imperatively protecting rights of individuals to the point that it became the essence of international law<sup>10</sup>. International lawyers started to specifically consider the issue of sexual violence in armed conflicts for the first time in the Fourth Geneva Convention (1949) and Additional Protocols (1977). The Rome Statute successfully made it a war crime in 1998. With those issues on the agenda of the United Nations it started to attract more and more attention within the organization.

At the same time the development of human rights created a general debate surrounding humanitarianism. Some scholars defended the idea that supporting global human rights meant intervening in other countries to free foreigners from tyrannical governments<sup>11</sup>. Generally, this idea stemmed from the liberal philosophy of the West. The responsibility to protect doctrine was born from the mentality and the failures of the United Nations to prevent the genocides in Kosovo and Rwanda. It has huge proponents such as Samantha Power, former U.S. Ambassador to the United

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<sup>10</sup> Moyn, Samuel, et al. *The Last Utopia : Human Rights in History* (Harvard University Press, 2010), 176

<sup>11</sup> Brysk, Alison. *Global Good Samaritans : Human Rights As Foreign Policy* (Oxford University Press USA-OSO, 2009), 3

Nations<sup>12</sup>. Yet other scholars asked how militarized intervention could even be considered humanitarian<sup>13</sup>. There was thus a debate on how to incorporate human rights internationally but also on the form of intervention and the mechanisms of enforcement human rights would entail. The idea of peacekeeping falls into the first category: it defends the fact that one should intervene to prevent humanitarian disasters.

## 2. Causes of sexual violence in conflict

In light of the victory of human rights law and the progressive codification of norms prohibiting sexual abuse, the problem of SEA in U.N. peacekeeping missions seems paradoxical. However, five factors underlined by the literature can explain why the issue is persistent: the militarization of U.N. peacekeeping, the gender composition of the troops, the illusory lawlessness of war and economic imbalance (both suggested by Neudorfer) and the colonial dimension.

### 2.1 Militarization of peacekeeping

When the first mission was launched in 1948, United Nations peacekeeping was a legally elusive concept. It does not appear in the United Nations Charter and was initially understood as a tool to stabilize countries in a post-conflict situation. While the first mission did not play an active part in the hostilities, a progressive militarization of the missions occurred early in the history of U.N. peacekeeping. Nowadays, it is defined in a broader way: "Today's multidimensional peacekeeping operations are called upon not only to maintain peace and security, but also to facilitate the political process, protect civilians, assist in the disarmament, demobilization and reintegration of former combatants; support the organization of elections, protect and promote human rights and assist in restoring the rule of law<sup>14</sup>."

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<sup>12</sup> Samantha Power, *A problem from Hell* (Basic book, 2002)

<sup>13</sup> "Humanitarian Intervention : Ethical, Legal and Political Dilemmas", edited by Robert O. Keohane, and J. L. Holzgrefe, Cambridge University Press, (2003):1

Rudiger Bittner, *Ethics of Humanitarian Interventions*, (edited by Georg Meggle, 2004), 217-218

Xabier Etxeberria, "Reflections on Humanitarian Action : Principles, Ethics and Contradictions", edited by Studies Unit Humanitarian, Pluto Press, (2001):80

<sup>14</sup> "What is peacekeeping?", United Nations, 2019

The United Nations now define peacekeeping as a tool to restore democracy and rebuild the peace after the end of hostilities. A good example of this contemporary understanding of peacekeeping is the UNMIL mission in Liberia which was closed down in 2018, after assisting the country in three consecutive elections.

In spite of not being incorporated in the U.N. Charter, the concept of peacekeeping appeared relatively early in the history of the organization as the first mission dates back to 1948: The United Nations Truce Supervision Organisation (UNTSO) was created as a stabilizer for Palestine, after hostilities began due to the partition of Israel and Palestine. This first mission was composed of military observers who were not actively taking part in the conflict. The UNTSO was never officially closed: nowadays it is composed of observers working for surrounding missions in the Middle East<sup>15</sup>.

The first militarized mission, United Nations Emergency Force I (UNEF I) deployed in 1956, was in charge of ending the Suez crisis. Its mandate was: « to enter Egyptian territory with the consent of the Egyptian Government, in order to help maintain quiet during and after the withdrawal of non-Egyptian forces and to secure compliance with the other terms established in the resolution ... to cover an area extending roughly from the Suez Canal to the Armistice Demarcation Lines established in the Armistice Agreement between Egypt and Israel<sup>16</sup>. »

Since UNEF I was established by the General Assembly of the United Nations and not by the Security Council, the deployment of forces required the authorization of Egypt and Israel<sup>17</sup>. The missions that followed, established under Chapter VII of the UN Charter by the Security Council, do not require authorization of the Member States.

The first U.N. military mission of this kind was the United Nations Operation in the Congo (UNOC), with 19 000 soldiers deployed at its peak. The mission lasted from 1960-1964<sup>18</sup>. UNOC was launched right after the Congo gained independence in 1960; it was intended to stabilize the

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<sup>15</sup> ["Background of the UNTSO", United Nations Truce Supervision Organization, 2019](#)

<sup>16</sup> [United Nations Secretary General, "General Assembly's first emergency special session for the establishment of UNEF I" \(1956\)](#)

<sup>17</sup> SS Malawer, "The Withdrawal of UNEF: A new notion of consent", *Cornell International Law Journal*, Volume 4, Issue 1, Article 2 (1970)

<sup>18</sup> ["Republic of the Congo - ONUC facts and figures", United Nations, 2001](#)

country during the Congo crisis, a civil war and a proxy war between the United States and the Soviet Union. This mission is described by Thomas M. Franck as a turning point in the history of U.N. peacekeeping, shifting from peaceful interventions to an actively armed mission, militarizing the concept of peacekeeping, created on the basis of Chapter VII of the United Nations Charter and placed under binding decisions of the Security Council<sup>19</sup>.

While there is literature on this four-year mission, it is difficult to find anything related to SEA committed by peacekeepers at the time. In general, the literature has addressed sexual violence only in the missions from the 1990s onwards. The first case addressed was the U.N. Mission to Cambodia (UNTAC). Following the establishment of the mission the number of prostitutes in Cambodia significantly rose, as NGOs reported<sup>20</sup>. A report of the Permanent Representative of Jordan mentions allegations in the Balkans dating back to the same period, more specifically in Bosnia and Herzegovina and Kosovo<sup>21</sup>. A report by UNICEF in 1996 also mentions child exploitation by UN Peacekeepers and the rise of child prostitution in Mozambique (ONUMOZ mission)<sup>22</sup>.

The question of the militarization of interventions is closely related to the problem of sexual exploitation, as the literature explores the link between military and sexual abuse. There is a recurring argument that traditional masculinity as it is portrayed in the military encourages violence, including sexual violence, often against women in order to reaffirm the masculinity of the soldiers<sup>23</sup>. According to Aron Belkin, some men join the military for the purpose of proving their

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<sup>19</sup> Thomas M. Franck "United Nations law in Africa: The Congo operation as a case study", University of Duke, (October 1962): 638

<sup>20</sup> Sarah Martin, "Must boys be boys? Ending sexual exploitation and abuse in UN peacekeeping missions", *Refugees International* (Fall 2005): 4

Céline Fürer, "Sexual exploitation and abuse by United Nations peacekeepers A quantitative analysis of variation of sexual exploitation and abuse in UN peacekeeping operations in Africa" (Master's diss., University of Oslo, 2017): 1

<sup>21</sup> His Royal Highness Prince Zeid Ra'ad Zeid Al-Hussein, "A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations", United Nations General Assembly, (24 March 2005): 7

<sup>22</sup> Graça Machel, "Impact of armed conflict on children", UNICEF (26 August 1996): 24

<sup>23</sup> Eileen L. Zurbriggen, "Rape, war, and the socialization of masculinity: why our refusal to give up war ensures that rape cannot be eradicated", University of California, Santa Cruz (2010): 542

Ruth Jamieson, "The Criminology Of War", (International library of criminology, 2014), 314

masculinity<sup>24</sup>. Elizabeth Badinter argues that proving one's masculinity is understood as proving that one is not feminine and thus rejecting femininity.

## **2.2 Gender parity**

Another argument is that there is insufficient gender parity in U.N. Peacekeeping forces and that an increase in the number of female soldiers would be beneficial to solve the problem. For the main missions such as the MINUSCA the military troops are composed of 11 225 male soldiers and 400 female soldiers, or 3.5% of the troops<sup>25</sup>. The composition of the MONUSCO is similar with 15 045 male and 572 female soldiers, or 3.8%. If resolution of the Security Council 1325 has inspired the UN to take on institutional changes in the gender composition of the forces, those changes seem to take time. The civilian dominated mission MINUJUSTH in Haiti is composed of 14% of women and 86% men is better in terms of gender parity although the mandate of Resolution 1325 is still far from being a reality.

## **2.3 Lawlessness of the context of war**

Another aspect cited by Wolfgang and Ferracuti is the “lawlessness” context of war. In the context of an armed conflict, soldiers are under the impression that they are untouchable and that there will be impunity for their actions, since the normal judicial system is not functional in times of war. In fact, many peacekeepers do enjoy functional immunity for the acts committed during the mission, as long as the act was part of their duties.

One explanation of such behavior is the theory of subculture developed by Neudorfer, which posits that following the norms of a certain group is respected while not following them is frowned upon<sup>26</sup>. She describes the theory which deals with the subculture of violence where violent behavior is the norm in a group. For the individuals within the group, a subculture of violence paired with a

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<sup>24</sup> Aaron Belkin, "Bring Me Men: Military Masculinity and the Benign Facade of American Empire, 1898-2001", (Oxford University Press, 2012), 4

<sup>25</sup> [United Nations Peacekeeping, "Data on gender", 2019](#)

<sup>26</sup> Neudorfer, Kelly. Sexual Exploitation and Abuse in UN Peacekeeping : An Analysis of Risk and Prevention Factors, Lexington Books, 2014: 103

sentiment of impunity encourages them to commit SEA, as more benefits than disadvantages will come from it.

Taking the case of the SS Otto Moll who was part of the staff in Auschwitz, Bruneteaux and Mailänder argue in the context of war, the actor's cruelty is a combination of both personal dynamics and collective dynamics. For the aggressor, cruelty in this context is not the final objective but a means to an end. The end is to obtain social status in the organization but also to serve the organization<sup>27</sup>. However, if the use of cruelty does not come as a surprise for the staff of the concentration camps of the Third Reich whose intentions were by nature genocidal, it is more unsettling that a subculture of violence would develop in a group whose explicit mission statement is peacekeeping, peace building and security.

Other arguments include the economic imbalance of power and the residential mobility factor. Neudorfer explains that in some missions, "the daily allowance [provided to peacekeepers] exceeds the per capita annual income in the host country" which gives peacekeepers enormous economic power. The high salary paid by the United Nations is often the main motivation of the soldiers to take part in a mission where they receive a wage much higher than usual, casting doubt on the ideological motivations of peacekeepers to maintain peace and security in the host country<sup>28</sup>. The residential mobility factor which comes on top of this economic imbalance relates to the fact that U.N. missions take place in countries where there is an armed conflict. This means that there are a lot of internally displaced people, a factor that makes them vulnerable. In addition, the soldiers are also often dispatched for three to six months. Their mobility is also a factor of instability as it reduces the likelihood of having to face consequences and also creates a climate of impunity.

## **2.4 The question of the colonial past**

An important element to consider is that the human rights framework of the United Nations was developed at a time where there were still colonies all around the world, which is partly why the UDHR had no legal enforcement mechanism in 1948. For instance the United States still had Jim

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<sup>27</sup> Bruneteaux Patrick, Mailänder Elissa, "Les violences concentrationnaires au prisme de la cruauté (1933-1945) : le cas d'Otto Moll", *Histoire@Politique*, 2015/2 (n° 26): 47-63

<sup>28</sup> Haas and Kernic 1998: 51; Aning 2007: 140

Crow laws and segregation. The remaining European maritime empires, especially France and Britain, did not intend to actually enforce human rights within their territories. As a matter of fact, the ratification of the two Covenants of 1966, which are legally binding, occurred only after decolonization.

This brings us to the first paradox of the human rights ideology: its ethnocentrism paired with its proclaimed universality has been pointed out by Normand and Zaidi, Mutua, Morsink, Abdullahi Ahmed An-Na'im, Legesse, and Cassese among others<sup>29</sup>. This paradox was already present at the Dumbarton Oaks conference. As Morsink puts it: "It is no secret that the major powers that promoted these rights and eventually established the UN system, the United States and the British empire in particular, did so from within the framework of an explicitly imperialist and racist world order of which they were leaders and beneficiaries<sup>30</sup>." China, invited to the second phase of the Dumbarton Oaks talks, tried to incorporate a clause against racism but the United States representatives, who were paradoxically the ones who insisted on mentioning human rights in the proposals, convinced them to give up on it. This anecdote echoes the Japanese Racial Equality Proposal, an amendment under consideration for the Treaty of Versailles that intended to recognize racial equality among members of the League of Nations<sup>31</sup>.

Morsink extensively describes this phenomenon concerning the drafting of the Universal Declaration of Human Rights (1948), pointing out that the drafters were mostly from the North Atlantic while huge regions of the world were underrepresented. This problem was pointed out by the drafters themselves<sup>32</sup>. Eighteen representatives were involved in the process, with particularly influential members from France, Canada, the U.S. (Eleanor Roosevelt), Lebanon, and China. However this idea is rejected by Benhabib. The counter-argument is that all cultures undergo social

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<sup>29</sup> Normand, Roger, and Sarah Zaidi. *Human Rights at the UN : The Political History of Universal Justice* (Indiana University Press, 2008), 112

Mutua, "Savages, victims and saviors: the metaphor of human rights", *Harvard Law Journal*, 2001

Morsink, Johannes, citing Abdullahi Ahmed An-Na'im and Cassese. *The Universal Declaration of Human Rights : Origins, Drafting, and Intent*, (University of Pennsylvania Press, 1999)

<sup>30</sup> Normand and Zaidi "Human Rights at the UN", 28

<sup>31</sup> [Philippe Pons, "En 1919, l'honneur blessé du Japon", Le Monde, 2018](#)

<sup>32</sup> Morsink, Johannes. *The Universal Declaration of Human Rights : Origins, Drafting, and Intent* (University of Pennsylvania Press, 1999)

transformations and have to adapt to crises to evolve and survive. Benhabib stated the following “Very often, cultures are presented as hermetic and sealed wholes; the internal contradictions and debates within cultures are flattened out; the different conceptual and normative options which are available to the participants of a given culture are ignored<sup>33</sup>”.

While it is easy to reflect on the evolution on our own culture, especially in terms of the progressive enforcement of human rights, there is a tendency to generalize on other cultures and the belief that there are internally homogenous and stagnant, that their essence is fixed in time and that everyone that is part of the culture acts according to the same values. This generalization can lead to the false belief that human rights values are ethnocentric since other cultures, holding other values, will never want to implement them, will never evolve to embrace those human rights values and no one inside of the foreign culture already embraces them.

Given the colonial past of the countries where UN peacekeeping missions are deployed, it should not come as a surprise that the post-colonial aspect of sexual violence has been cited by the literature, for example by Blanchard in his book *Sex, race and colonies. Domination of bodies from the 15th century to today*<sup>34</sup>. There is historical work on sexual violence during the colonial period, which has been used as a tool of war and a method to further transform local people into the “Other”. This is where the ethnocentrism argument becomes relevant: the colonial spirit is characterized by domination and subjugation with the self-proclaimed goal of civilizing another people. This domination can only function if the colonizer believes in his own superiority. Roland Paris defines peace building missions as the modern version of the *mission civilisatrice* aiming at imposing a unified model of governance across the world<sup>35</sup>.

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<sup>33</sup> Benhabib, "Cultural complexity, Moral Interdependence, and the Global Dialogical Community" in *Women, Culture and Development*, ed. Martha C. Nussbaum (United Nations University, 1995), 240

<sup>34</sup> Pascal Blanchard, Nicolas Bancel, Gilles Boëtsch, Dominic Thomas and Christelle Taraud: *Sexe, race & colonies: La domination des corps du XVI<sup>e</sup> siècle à nos jours*, (Editions la découverte, 2018).

<sup>35</sup> Roland Paris, "International peacebuilding and the ‘mission civilisatrice’ " *Review of International Studies* (2002), 638

Chamoiseau argues that UN Peacekeeping missions are the legacy of those episodes<sup>36</sup>. In his book *Sex, race and colonies* he states: "Those moments of sexual violence resonate with contemporary armed conflicts, as demonstrates the use of rape by American troops and their allies during the Vietnam war from 1955 to 1975 but also the Soviets during the first Afghan war between 1979 and 1989 and even more recently the allied troops in Iraq, the Russians in Chechenia and the Peace Corps of the United Nations in the Democratic Republic of Congo<sup>37</sup>."

Similarly, this link to a colonial past has been made by a perpetrator himself: "Over there the colonial spirit persists, the white man gets what he wants<sup>38</sup>" said Didier Bourguet, a peacekeeper in the MONUSCO in the Democratic Republic of Congo and the first UN Peacekeeper tried for sexual assault in a U.N. field mission by the French government<sup>39</sup>.

The literature review has demonstrated that human rights progressively became a priority of the work of the United Nations, while it was not a major topic at its creation. With the progression in general the idea of protecting people from sexual violence also came.

## Chapter 1: The Human Rights framework.

The goal of this chapter is to show the evolution within the human rights law framework of the United Nations on sexual violence from 1945 to nowadays and the evolution of the mentality of the international community in general regarding this issue. This evolution is important to address for several reasons.

First, the Vienna Conference of 1993, which is examined in detail, was the starting point of several mechanisms that created individual complaint mechanisms addressing sexual violence. Thus making international treaties and conventions more effective in practice. It also influenced the

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<sup>36</sup> Sara E. Davies, Jacqui True, "The Oxford Handbook of Women, Peace, and Security", Oxford University Press (2018): 215

<sup>37</sup> Blanchard, Taraud, Thomas, Boëtsch, Bancel, "How sexual images from colonial times influenced the mentality of Western societies", 2018.

<sup>38</sup> Sara E. Davies, Jacqui True, "The Oxford Handbook of Women, Peace, and Security", Oxford University Press (2018): 215

<sup>39</sup> [Le Monde, Agence France Presse and Reuters, "A French soldier condemned to nine years of prison in a rape case", 2008](#)

creation of the Security Council Resolution 1325, the landmark resolution on Women, Peace and Security at the heart of the work of many organizations on the ground.

Secondly, the legal evolution is important to address because a breach of International Humanitarian Law means that a peacekeeper could be liable in front of international courts or be criminally liable in front of national courts if they implemented the crimes of the ICC in their national legislation.

States are influenced and oftentimes adopt the crimes laid out by International Criminal Law in their national legislation <sup>40</sup>. In the case of a U.N. military peacekeeper, it means that they could be held liable for war crimes or crimes against humanity.

This theory is ambitious as it has not yet happened but the idea is supported by several scholars including O'Brien and Ndulo<sup>41</sup>. A more realistic expectation is that they could be liable for sexual violence by their States in case of rape and sexual assault but also, in some cases, for sexual exploitation if prostitution is illegal domestically.

## 1. Perceptions and changes in mentality: History of human rights and Sexual Exploitation and Abuse cases from 1945 to nowadays.

### 1.1 Original intent of the drafters of the founding treaties of human rights.

The founding treaties of international human rights law that were ratified after WWII do not explicitly mention sexual violence. This has several major reasons.

First, human rights law is an integral part of public international law. In the discipline, the traditional idea is that states and international organizations are the main actors and not individuals. As such, sexual violence was not counted as a human rights violation, since it was mostly not

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<sup>40</sup> Jann K. Kleffner, "The Impact of Complementarity on National Implementation of Substantive International Criminal Law", *Journal of International Criminal Justice*, Volume 1, Issue 1, (2003): 86

French Criminal Code, "Article 212-1: On crimes against humanity", Legifrance, 2019

<sup>41</sup> O'Brien, Melanie, "Protectors on trial? Prosecuting peacekeepers for war crimes and crimes against humanity in the International Criminal Court", *International Journal of Law, Crime and Justice*, (2012).

perpetuated by the state but is rather a criminal offense committed by an individual upon another. Rape or sexual violence in general was to be tried by domestic courts and what constituted rape was to be determined by national legislation<sup>42</sup>. Furthermore, whenever there was an international armed conflict, sexual violence was considered to be an inevitable byproduct of war.

The human rights framework introduced the idea that the individual was a subject of international law, but only as a subject whose rights could be violated by the state. This in itself was a revolution since prior to the Nuremberg trials, there was no way to punish a state for acts committed against its own population<sup>43</sup>.

As seen in the introduction, the spirit of the United Nations Charter and Universal Declaration of Human Rights was to counter abuse committed by states during the Second World War.

This is illustrated by the words of the Chilean delegate who drafted the UDHR, Hernan Santa Cruz, who explained that the articles of the Declaration ensured that "the interests of the individual [come] before those of the state and that the state should not be allowed to deprive the individual of his dignity and his basic rights<sup>44</sup>."

If the Declaration does not prohibit sexual violence, Article 3 and Article 5 are the articles that come closest to it:

Article 3: "Everyone has the right to life, liberty and security of person." and Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>45</sup>."

According to Morsink, the UDHR was written with the history of concentration camps in mind. Article 3 and Article 5 should actually be read as a reference to the experience of the war, and particularly the concentration camps. In practice, NGOs regard Articles 3 and 5 as including sexual violence<sup>46</sup>. The articles are interpreted in that light by feminist organizations but also by organizations such as Human Rights Watch or Amnesty International, but were not initially drafted with that idea in mind.

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<sup>42</sup> Eriksson, Maria. *Defining Rape : Emerging Obligations for States under International Law*, (BRILL, 2011).

<sup>43</sup> Moodrick-Even Khen, Hilly and Alona Hagay-Frey: "Silence At The Nuremberg Trials: The International Military Tribunal At Nuremberg And Sexual Crimes Against Women In The Holocaust", (2014)

<sup>44</sup> [United Nations Human Rights Office of the High Commissioner: "30 articles on the 30 articles: The Universal Declaration of Human Rights at 70: Still working to ensure freedom, equality and dignity for all", \(2018\)](#)

<sup>45</sup> United Nations, "Universal Declaration on Human Rights", (1948)

<sup>46</sup> Bunch, Charlotte and Florence Btegwya "Report of the Global Tribunal on Violations of Women's Human Rights", World Conference on Human Rights, (1993).

A good example that shows that the idea did not exist at the time for the international community was that the issue of sexual violence committed by the Nazis was evoked but not prosecuted as part of the Statute during the Nuremberg trial in 1945. The trial was focused much more on preventing another war from happening than on specific individual stories. The crime of rape was also deemed improper to discuss and was surrounded by a form of taboo<sup>47</sup>. Rape was however condemned by the International Military Tribunal for the Far East (IMTFE) in 1946. The IMTFE, also known as the Tokyo Trial, tried the leaders of Japan for crimes committed during the war. However, they did not qualify rapes as inhumane treatment or as a war crime.

## **1.2. Growing recognition of sexual violence as a human rights violation.**

The growing awareness of the importance of sexual violence in conflict was closely intertwined with the progression of women's rights: even though the conflict in Yugoslavia saw a lot of cases of sexual violence against men, the first advances made in relation to sexual violence were related to violence against women with a campaign led by feminist organisations.

The U.N. World Conference on human rights in Vienna of 1993 (14-25 June 1993) recognized sexual violence as a human rights violation explicitly, and in particular in the context of an armed conflict. The conference was called to assess the progress made on human rights since the UDHR of 1948. Since the Cold War had just ended, the United Nations was finally free to act of the tensions between the Western and Eastern bloc which had until now paralyzed the organization;<sup>48</sup>. In a final document, the Vienna Plan of Action, Member States affirmed that:

"Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response<sup>49</sup>."

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<sup>47</sup> [United Nations, "Women2000: Sexual Violence and Armed Conflict: United Nations Response", \(1998\)](#)

<sup>48</sup> Patricia Feeney, "The UN World Conference on Human Rights, Vienna, June 1993", *Development in Practice*, Vol. 3, No. 3, (1993): 218

Kevin Boyle, "Stock-taking on Human Rights: The World Conference on Human Rights, Vienna 1993", *Political Studies* (1995): 79-95

<sup>49</sup> United Nations Office of the High Commissioner, "Vienna Declaration and Programme of Action" (1993): §38

This first breakthrough was the result of intense lobbying conducted by NGOs from every region of the world, among which: WiLDAF (Women in Law and Development in Africa), the Asian Women's Human Rights Council, and CLADEM (Latin American Committee for Women's Rights)<sup>50</sup>. Their fight actually began in New York in 1991 when women from the U.N., from NGOs and academics gathered and started to reflect on the situation of women's rights in the global human rights movement<sup>51</sup>. A petition was drafted which would be a solid basis for those activists when they would come lobby in Vienna in 1993. It brought together 1000 groups.

For three days before the actual conference in Vienna, NGOs worked together and held regional meetings to find a common ground on the recommendations they would address to States. They wanted to ensure that women's rights would be put on the agenda<sup>52</sup>. Women's rights activists from those different organizations assembled under the name of the Global Campaign for Women's Human Rights.

When the actual conference started, the activists convened in the tower of the Austria Centre, a few meters away from the U.N. Headquarters in Vienna, and continued to organize themselves. This attracted the attention of *The New York Times* and *The Washington Post*. Around the issue of sexual violence in conflict, an issue that was addressed by the Global Tribunal set up by those organizations to try offenses committed against women, people started to lie down in front of the doors of the conference in protest over war crimes against women in Bosnia<sup>53</sup>.

The World Conference on Human rights of 1993 is known for its intellectual debate on the universality of human rights: are they "universal and absolute" or could they differ depending on the cultural context?<sup>54</sup>. In the end, the idea that human rights are interdependent and universal prevailed, which was important for the NGOs defending women's rights.

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<sup>50</sup> Donna J. Sullivan, "Women's Human Rights and the 1993 World Conference on Human Rights", *The American Journal of International Law*, Vol. 88, No. 1, (1994):152-167

<sup>51</sup> Bunch Charlotte and Niamh Reilly. *The Global Campaign and Vienna Tribunal for Women's Human Rights*, (Center for Women's Global Leadership and United Nations Development Fund for Women (UNIFEM), 1994), 4

<sup>52</sup> Sullivan:152

<sup>53</sup> Bunch and Reilly: 93

<sup>54</sup> Bunch and Reilly: 93

At the governmental level, the first Regional Meeting on Africa was the first to adopt a resolution on women's rights urging other governments to ratify the Convention on the Elimination of all Discrimination Against Women and invoking the African Charter of Human Rights.

Most of the governments of Asian countries wanted to stress that human rights were to be taken in their cultural context and were the most reluctant to endorse the universality of human rights<sup>55</sup>; however, they failed to defend that position because African governments did not support them and NGOs active in Asia and the Pacific launched a counter-campaign to what their governments would argue during the three preparatory days<sup>56</sup>. The Bangkok declaration, the final document produced by the Asian Regional Meeting, endorsed universalism and stated: "While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights including women's rights must not be tolerated<sup>57</sup>."

The persistence of the NGOs was not the only factor that convinced member states to explicitly address the problem of sexual violence in conflict. The conflict in ex-Yugoslavia was a turning point for the international community at large and the United Nations in terms of recognition of epidemic sexual violence in conflict<sup>58</sup>. The delegates were influenced by the fact that when they arrived in Vienna, the conflict was ongoing and geographically close.

In January 1993, months before the Vienna Conference, Amnesty International released a report on the situation of women in particular and sexual violence in the conflict called *Bosnia-Herzegovina: Rape and sexual abuse by armed forces*. The Amnesty International team interviewed individuals and reported on horrific cases<sup>59</sup>. Amnesty's method of investigating and reporting through country-specific reports while a conflict was still happening was relatively new: this type of coverage did

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<sup>55</sup> Sullivan:153

<sup>56</sup> Feeney: 219

Bunch and Reilly: 4

<sup>57</sup> [General Assembly Regional Meeting "Report by the Secretariat: Bangkok NGO Declaration on Human Rights", \(1993\)](#)

<sup>58</sup> [United Nations, "Women2000: Sexual Violence and Armed Conflict: United Nations Response", \(1998\)](#)

<sup>59</sup> [Amnesty International, "Bosnia-Herzegovina: Rape and sexual abuse by armed forces", \(1993\):11-27](#)

not exist during World War II for instance, and started with a first global campaign against torture conducted by AI in 1972<sup>60</sup>.

There were also BBC interviews and Guardian articles about rapes occurring during the conflict, indicating extensive media coverage<sup>61</sup>. The previous year, the Security Council had adopted resolution 798 on "massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina" and established a Commission of Experts (Yugoslav Commission) to investigate on sexual violence in the conflict<sup>62</sup>.

The result of the Vienna Conference on Human Rights of 1993 was the official recognition that violations against women in conflict breached human rights as well as humanitarian law. As Sullivan remarks, the recognition was timid as governments qualified systematic rape as a breach of international law but not as a war crime or a crime against humanity<sup>63</sup>. It was nonetheless an important legal evolution.

From then on and especially from the United Nations World Conference on Women in Beijing 1985, where the famous speech by Hillary Clinton "Women rights are human rights" was given, more attention was given to the situation<sup>64</sup>. According to Human Rights Watch, the growing recognition was not matched with a decline in sexual violence around the world. In 2000, the organization urged governments to make the promises of the Beijing conference a reality<sup>65</sup>.

In 2000, the UN Security Council passed the landmark Resolution 1325 entitled: "Women, Peace and Security<sup>66</sup>" in which it reaffirmed the fact that women should be protected from sexual violence in conflict and to that aim, participate in conflict solving and peace building. Since the passing of this resolution, the Security Council has passed six more resolutions related to the topic of gender

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<sup>60</sup> Dennis Barker, "From the archive, 12 December 1972: Governments now connive in torture, says Amnesty International", *The Guardian*, 2012

<sup>61</sup> For example: BBC, "Serbs force Muslims out of Srebrenica" (1995) and *The Guardian*, "A public show in the sniper season" (1993)

<sup>62</sup> United Nations, "Security Council resolution n°798", S/RES/798, (1992)

<sup>63</sup> Sullivan:156

<sup>64</sup> Hillary Clinton Speaks to the U.N. 4th World Conference on Women Plenary Session (1995)

<sup>65</sup> Human Rights Watch, "What will it take? Stopping violence against women: A challenge to governments" (2000)

<sup>66</sup> United Nations, "Security Council resolution n°1325", S/RES/1325 (2000)

and armed conflict. Building from Resolution 1325 the first resolution of the UN specifically about sexual violence in conflict was Resolution 1820 (2008).

Concretely, this also resulted in the adoption of the Optional Protocol of the CEDAW, which reaffirms the Vienna Declaration and Programme of Action, and created an individual complaint mechanism, making the treaty legally enforceable.

The landmark resolution 1325 (of the Security Council) has inspired legal changes in domestic legislation, for instance in the Democratic Republic of Congo and is the basis of the work of many activists organizations. It lacks, however, the legal enforcement that international treaties have.

## 2. Legal evolutions in the framework of human rights from 1945 to nowadays.

In this section we will examine the evolution of legal norms in International Humanitarian Law and International Criminal Law, that could be used if a military peacekeeper was prosecuted by the International Criminal Court or by their own State.

It should be noted that while this is possible in theory, it has never happened in practice. It should also be noted that it would be difficult in certain cases to prove that the peacekeeper's behavior amounts to a war crime or a crime against humanity (as opposed to 'only' sexual abuse or exploitation). Not all crimes committed by peacekeepers would fall under those definitions.

### **2.1. International Humanitarian Law**

International Humanitarian Law or the law of armed conflict seeks to reduce the effects of conflicts and limits the means and methods of warfare<sup>67</sup>. Whenever there is an international or non-international armed conflict (civil war or inter-State conflict), the main treaties that apply are the Geneva Conventions (I-IV) and its additional protocols.

The Geneva Conventions were drafted in 1949, at the same time when the UDHR was drafted. The one we will use is the Fourth Convention relative to the protection of civilian persons in times of war. Article 27 of the Fourth Geneva Convention explicitly states that rape is prohibited and

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<sup>67</sup> [International Committee of the Red Cross, "What is International Humanitarian Law?", 2004](#)

considered as an "attack against the honor of a woman"<sup>68</sup>. Article 147 lists all major breaches of the convention: rape is not explicitly cited.

However, the International Committee of the Red Cross (ICRC), which is the authority on the interpretation of the Conventions and the protocols, commented that "the grave breach of "willfully causing great suffering or serious injury to body or health "encompass rape." This has also been the interpretation of the US State Department<sup>69</sup>. Rape became a grave breach of IHL by interpretation.

In the Rome Statute (1998), rape was cited as a war crime. "Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions"

The next step was for sexual violence to be recognized as a crime against humanity, which was recognized by case law.

## **2.2. International Criminal Law**

International Criminal Law is a part of public international law designed to hold individuals criminally accountable for four core crimes: genocide, crimes against humanity, war crimes and aggression. In this thesis, we will examine all of those crimes with the exception of the crime of aggression.

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is the first ad hoc court established by the United Nations to judge war criminals following the Yugoslav war. The tribunal, whose Statute was discussed in section i, rendered landmark cases regarding sexual violence. Meanwhile, the International Criminal Tribunal for Rwanda was established one year later in 1994 and is also famous for cases on sexual violence and on what constitutes the crime of genocide.

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<sup>68</sup> [Fourth Geneva Convention, Article 27, 1949](#)

<sup>69</sup> Sherrie L. Russell-Brown, "Rape as an Act of Genocide" , Berkeley Journal of International Law, vol.2, art.5 (2003): 358

Theodor Meron, "Rape as a Crime Under International Humanitarian Law", The American Journal of International Law, Vol. 87, No. 3, (1993): 427

*i. The International Criminal Tribunal for ex-Yugoslavia: first evolutions of sexual violence in case law.*

The work of the ICTY on sexual violence in statistics: Since the Tribunal started its work, 78 individuals, or 48% of the 161 accused, had charges of sexual violence included in their indictments<sup>70</sup>.

The first landmark case on sexual violence is Prosecutor v. Duško Tadić (1997). Firstly, the defendant was convicted for rape as a crime against humanity which had never happened before and secondly, the Tadić case prosecuted sexual violence against men, a recurring issue for the ICTY but one that had not been addressed by the international community<sup>71</sup>.

Furundžija was the first case where sexual violence was at the centre of the trial. It confirmed that "Rape may also amount to (...) an act of genocide, if the requisite elements are met, and may be prosecuted accordingly." The case followed in the steps of the International Criminal Tribunal for Rwanda which reached the same conclusions as in the Akayesu case during the same year.

In Prosecutor v. Mucić et al. (2007), the judges held that acts of rape may constitute torture under customary international law.

Finally, in Kunarac, the judges stated that rape could constitute a crime against humanity and that sexual enslavement was a crime against humanity: "There was no doubt in the Judges' minds that the enslavement was sexual in nature. This was a significant ruling, because international law had previously associated enslavement with forced labour and servitude. The definition of the crime was therefore widened to include sexual servitude."

*ii. International Criminal Tribunal for Rwanda.*

One of the main contributions of the Tribunal in terms of sexual violence was to define rape as a constituting element of genocide. The crime of genocide, often referred to as "the crime of crimes" is defined by Article 2 of the Genocide Convention (1948):

"Article II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such : (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group."

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<sup>70</sup> [United Nations International Criminal Tribunal for the former Yugoslavia, "Crimes of sexual violence in numbers", \(last modified in 2016\)](#)

<sup>71</sup> United Nations International Criminal Tribunal for the former Yugoslavia, "Prosecutor v. Duško Tadić, Sentencing Judgement" (1997) §74

The *actus reus* of the crime is to commit any offense from (a) to (e) but there must be a special intent to destroy the protected group. The crime of genocide is unique because there are two mens rea elements: the general intent and the special intent. This means that the intent to kill or rape someone is not sufficient to constitute genocide even in a genocidal context if there is no special intent to destroy the group. Not all rapes committed in Rwanda while the genocide was taking place amount to genocide. According to Tefera:

"Mostly, several factors such as sexual gratification, political gain, or economic benefit may motivate a perpetrator to participate in the destruction of certain protected groups. However, mere motive, which is not pooled with the 'special intent to destroy' component of genocide, does not amount to the constituent element of the crime of genocide<sup>72</sup>."

In *Ayakesu*, the Chamber concluded that "The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them", the Chamber concluded. Furthermore, these rapes were accompanied by a proven intent to kill their victims<sup>73</sup>.

Rape was used against Tutsi women and Hutu women who were married to Tutsi men with the aim of subjugating the Tutsis as an ethnic group<sup>74</sup>. The intent was different in Bosnia where the idea was to impregnate the victim so that her child would be seen as belonging to another ethnicity<sup>75</sup>.

This admission of rape being a part of genocide was not universally received as advancing the cause of women's rights. In fact, there was a fear that it would erase the fact that women were targeted on the basis of their gender and not only their ethnicity and that sexual violence in conflicts outside of a genocidal context would be neglected<sup>76</sup>.

In spite of those advances in case law, the Rome Statute did not include rape as a part of genocide.

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<sup>72</sup> Awet Hailezgi Tefera, "The Elements of Rape as a Crime of Genocide under International Criminal Law: Case law analysis ", *Mekelle University Law Journal*, Vol.2 No. 1 (2013): 45

<sup>73</sup> International Criminal Tribunal for Rwanda, *Akayesu*, 1998

<sup>74</sup> [Human Rights Watch and Fédération Internationale des Droits de l'Homme, "Shattered lives: Sexual Violence during the Rwandan Genocide and its Aftermath" \(1996\)](#)

<sup>75</sup> Sherrie L. Russell-Brown, "Rape as an Act of Genocide", *Berkeley Journal of International Law*, vol.2, art.5 (2003)

<sup>76</sup> Sherrie L. Russell-Brown, "Rape as an Act of Genocide ", *Berkeley Journal of International Law*, vol.2, art.5 (2003)

## Case study 1: The Democratic Republic of Congo.

The Kingdom of Congo was the biggest kingdom of Central Africa from 1482 to 1550, which spread on the territories of Angola, Congo-Brazzaville, Gabon and Congo itself<sup>77</sup>. Later, during the 19th century, it became an important hub of African slave trade and a Belgian colony after the Berlin Summit (1885-1886). When the Congo regained its independence in 1960, it was renamed Zaire.

Patrice Lumumba, a man which was instrumental in the independence movement and the leader of the Congolese National Movement, won the first national election in 1960. However, he did not stay in power for long since Joseph Désiré Mobutu seized power the following year by a *coup d'état*<sup>78</sup>.

Mobutu installed a totalitarian State which resulted in internal tensions and economic decline. Nevertheless, it was supported by Western countries and notably the United States because of its anti-communist stance. The country was thus prone to destabilization when the Rwandan Civil War started.

Because of the Rwandan genocide in 1994, 1.2 million people fled the country to Zaire. According to Deibert, 800 000 Rwandans fled to Kivu in 1994 alone, recreating military camps in the region<sup>79</sup>. The Kivu region, which shares a border with Rwanda, remains one of the most dangerous region of the Democratic Republic of Congo nowadays<sup>80</sup>. This situation degenerated into the First Congo War (1996-1997) when Rwanda invaded the country in search of the rebel groups which had settled in the country. The war opposed the government of Zaire to the Alliance of Democratic Forces for the Liberation (ADFL) of Congo-Zaire supported by Uganda and Burundi and led by Laurent-Désiré Kabila.

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<sup>77</sup> Deibert, Michael. The Democratic Republic of Congo : Between Hope and Despair, Zed Books, 2013: 51

<sup>78</sup> [Canadian Broadcasting Corporation, "The Democratic Republic of Congo: A brief history"](#)

<sup>79</sup> Deibert, Michael: 51

<sup>80</sup> Ibid: 9

The First Congo War resulted in an overwhelming victory of the ADFL, the establishment of the Democratic Republic of Congo of which Laurent-Désiré Kabila became president. Fearing a *coup d'état*, Kabila expelled forces from Rwanda and Uganda from the territory. This triggered the Second Congo War 1998-2003 involving nine African countries and causing 5.4 million deaths.

In 1999, the parties to the conflict agreed to signing the Lusaka ceasefire agreement, and demanded the deployment of a peacekeeping mission by the United Nations in virtue of Chapter VII of the U.N. Charter<sup>81</sup>.

## **1. Timeline and brief history of the MONUC and the MONUSCO.**

The Security Council passed resolution (1273) in 1999, one year after the beginning of the Second Congo War, establishing the MONUC to observe the implementation of the Lusaka Agreement.

The country was not stabilized until 2006 when democratic elections took place with the help of the MONUC, although ongoing conflicts continued. Following the elections, MONUC became MONUSCO to reflect the changes taking place in the country.

The new mandate of MONUSCO focused on the protection of civilians, which involved humanitarian and human rights issues. The mission helps support the government in stabilizing the country and consolidating peace. The MONUSCO is operating to this day according to the mandate of Resolution 2463 which extended the mission until December 2019<sup>82</sup>. Even though the United Nations has not left the country, most of the bases have been closed<sup>83</sup>. While Kabila was in power, he declared that he wanted the MONUSCO to close down in 2020, an ambition that has now become unrealistic.

At the time when the conflict was still ongoing, Rwanda had considerable influence in the DRC to the point, notably in the Kivu region, which is described by Human Rights Watch as "a proxy of the

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<sup>81</sup> [Lusaka Agreement §11 \(1999\)](#)

<sup>82</sup> [United Nations, "Security Council Resolution 2463", S/RES/2463 \(2019\)](#)

<sup>83</sup> [This is Africa, "The largest and most expensive UN Peacekeeping Missions are in Africa", \(2006\)](#)

Rwandan government<sup>84</sup>". According to Human Rights Watch there was a general climate of total impunity concerning violence against civilians as the war destroyed the economy, the infrastructure, and educational facilities, leaving people without resources and desperately trying to survive. In the province of the North Kivu in 2001 it is estimated that the majority of people lived with \$0.20 per day<sup>85</sup>. As underlined in the literature review, strong economic imbalance encourages SEA.

In general, prevalence of sexual violence in the Democratic Republic of the Congo makes it one of the most dangerous countries in the world. The Journal of the American Medical Association estimates that close to 40% of women have experienced sexual assault in the Eastern part of the DRC<sup>86</sup>.

On the other hand, Autesserre and Heaton criticize the focus on SEA in the Democratic Republic of Congo to the detriment of other crimes such as murder, torture and using children in conflicts, which, they argue, deserve as much attention.

Autesserre argues that the coverage of SEA has sometimes made the situation even worse, as armed groups have noticed that this brings attention to them and have started to use it to become more visible. The leader of the militia Mai Mai Sheka has ordered his soldiers in the past to systematically commit SEA because he wanted to be invited to the negotiation table. This tactic worked and other militias have decided to take the same path<sup>87</sup>. Heaton argues that in every humanitarian crisis people will focus on one particular type of victim and in the case of the Democratic Republic of Congo it has definitely been sexual violence<sup>88</sup>.

Local women's organizations have complained as well that there is too much emphasis on sexual violence itself to the detriment of other issues such as maternal health care, women's economic

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<sup>84</sup> [Human Rights Watch, "The war within the war", 2002](#)

<sup>85</sup> ASRAMES, Socio-economic investigation in North Kivu, 2000

<sup>86</sup> Kirsten Johnson, Jennifer Scott, Bigy Rughita, "Association of Sexual Violence and Human Rights Violations With Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo", 2010

<sup>87</sup> Autesserre, Dangerous tales: Dominant narratives on the Congo and their unintended consequences, 2012: 202-222

<sup>88</sup> Laura Heaton, The risks of instrumentalizing the narrative on sexual violence in the DRC: Neglected needs and unintended consequences, International Review of the Red Cross, 2014: 626

power, political participation; they show that some women have to present themselves as victims of sexual violence to benefit from healthcare<sup>89</sup>. The economic issues surrounding the conflict attract less attention and researchers that work on maternal care, health infrastructure etc. are less likely to interest the international community although they are much needed in a post conflict situation.

## **2. The problem of SEA in the MONUSCO.**

According to a former staff member of the MONUSCO mission<sup>90</sup>, the human rights framework, that is the UDHR of 1948, the Geneva Conventions of 1949, the International Covenants 1966, and Additional Protocols of 1977 as well as the Convention on the Elimination of All Forms of Discrimination Against Women influence the trainings provided to the staff on sexual abuse and exploitation upon arrival, which refers to those instruments.

The international treaties are used as a basis and a justification for the Code of Conduct. In practice, he thinks that the training is more helpful for problems of sexual exploitation than for sexual abuse issues: he believes that sexual offenders will commit crimes anyways, meanwhile peacekeepers who come from countries where prostitution is legal need the trainings to understand the rules of the mission.

He believes that the situation was worse when the MONUSCO was established, between 2002 and 2004. According to him, in the midst of the conflict, the leadership tolerated this type of behavior and did not explicitly speak against it, whereas now they have become vocal about this issue.

On the other hand, he regrets a paradoxical message sent by the United Nations: he recalls that condoms were freely provided to peacekeepers when he entered the mission in 2009, while according to the Code of Conduct any relationship with the local population is strongly discouraged, which he thinks sends a mixed message.

He also regrets that the staff in the MONUSCO at the time, period 2009-2015, was scarce on the investigative teams in charge of this issue and that they were lacking the proper resources. He does not know about the situation in the mission in 2019.

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<sup>89</sup> [Stern and Baaz, Nordic African Institute, "NAI researcher critical of rape report"](#)

<sup>90</sup> Interview conducted in May 2019

He affirms that in spite of the rules, he has witnessed on many accounts peacekeepers hiring prostitutes, hiding their uniforms not to be recognized or being openly in relationships with locals, although there is a huge power imbalance (economic imbalance) which transforms the situation into exploitation. He did not witness more grave forms of abuse such as child prostitution or sexual assault or rape.

According to him, some countries are more controlling than others of their peacekeepers and more likely to repatriate them. He gives the example of Sweden who repatriated some peacekeepers. In this case, they were denounced by compatriots living in the same house. It also depends on the country where the mission is posted and their national laws. If the country allows it, and the host country allows prostitution as well, then it is more difficult to prevent peacekeepers from breaking that rule.

He also regrets that women are not more present in the mission, ranging from 5-10% at the time when he was in the MONUSCO and believes that gender parity would be beneficial to solve that problem.

When asked about the role of NGOs on the matter of Sexual Abuse and Exploitation in field missions, he answers that while they can serve a role as watchdog of the United Nations or educating the local population, it is clear that abuse is also happening in NGOs such as Médecins Sans Frontières and even the International Committee of the Red Cross, the organization in charge of safeguarding international humanitarian law and the protection of civilians, due to power economic imbalance. What makes it a bit better in NGOs, according to him, is that people tend to be posted in the country longer which makes them more accountable to the community.

In conclusion, he adds that international organizations should have a common roster which would include the United Nations, the European Union and international NGOs and ban offenders from being assigned a posting to a new mission.

### **3. Analysis of SEA problems in the MONUSCO.**

Home country: the Democratic Republic of Congo.

Although military peacekeepers, which are the subject of this Chapter, are under exclusive jurisdiction of their home country, it is interesting to analyze the legal framework of the Democratic Republic of Congo and the rights of the citizens which demonstrate the efforts of the government to tackle the issue nationally.

Article 170 of the Congolese Code prohibits rape and sexual assault for adults and Article 174 j prohibits the sexual exploitation of children.

« Any act or transaction related to the trafficking or exploitation of children or any other person for sexual purposes in return for remuneration or any advantage whatsoever is punished with ten to twenty years of penal servitude<sup>91</sup>. »

In a recent development, the Law Relative to Sexual Violence (2006) and the Child Protection Law (Loi No 09/001, January 2009) raised the age of consent which is now 18.

Prostitution is legal in the Democratic Republic of Congo although a number of related activities such as forced prostitution and sex trafficking are illegal.

The DRC is not part of the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women, meaning that women in the DRC cannot directly seize the committee. The DRC ratified CEDAW without reservations.

However, the DRC is part of the Maputo Protocol to the African Charter on Human Rights on the equality of men and women, building on international treaties mentioned before and on Resolution 1325 of the Security Council. Article 11 protects women in the event of an armed conflict<sup>92</sup>.

Resolution 1325, although it does not have the same authority than that of international treaties, has positively impacted the MONUSCO.

« After women from the Democratic Republic of the Congo (DRC) learned of SCR 1325 from UNIFEM, they wrote a memorandum to their government, informing officials that as signatories to the resolution, they must move beyond rhetoric and implement it. For two years, they lobbied extensively for SCR 1325's implementation in the DRC, both nationally and internationally. When the UN peacekeeping mission (MONUC) arrived in the DRC in 2000 without a gender component, women lobbied the director of the mission for a gender office and perspective in the mission. Since a Gender Advisor became a part of the mission in March 2002, the women have been working closely with her on projects, such as translating SCR 1325 into the four official languages in DRC and strategies for inserting a gender perspective into all levels of the government<sup>93</sup>. »

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<sup>91</sup> Congolese Penal Code, "Article 174j", (2006)

<sup>92</sup> African Union, "Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa": Art.11, 2003

<sup>93</sup> Maureen Shaw, "Moving Beyond Rhetoric: Assessing the Impact of Resolution 1325", *Peace Women*, (2010):10

Nonetheless, in spite of there being numerous national, regional and international norms protecting human rights, there is an issue with implementing those norms. The State often lacks the capability to enforce those commitments, especially in the midst of a conflict where it is difficult to enforce the rule of law.

## Troop contributing countries and laws on SEA

This case study examines the case of military troops deployed in the MONUSCO. In case they were found guilty of sexual violence, they would be criminally liable by their own countries. Since the top ten contributors of military U.N. troops in the mission contribute 92% of peacekeepers of the MONUSCO, it makes sense to analyze the national laws of those countries on sexual violence and prostitution.

| Country      | Number of troops provided       | Legal regime on sexual abuse | Legal regime on prostitution    |
|--------------|---------------------------------|------------------------------|---------------------------------|
| Pakistan     | 2698 (17.6% of military troops) | Protects women and children  | Illegal                         |
| India        | 2624 (17.1% of military troops) | Protects women and children  | Legal                           |
| Bangladesh   | 1697 (11.1% of military troops) | Protects women and children  | Legal                           |
| Morocco      | 1368 (8.9% of military troops)  | Protects women and children  | Illegal                         |
| South Africa | 1118 (7.3% of military troops)  | Protects everyone            | Illegal                         |
| Indonesia    | 1034 (6.7% of military troops)  | Protects women and children  | Varies in function of provinces |
| Tanzania     | 951 (6.2% of military troops)   | Protects women and children  | Illegal                         |
| Uruguay      | 922 (6% of military troops)     | Protects everyone            | <i>Legal</i>                    |
| Nepal        | 887 (5.8% of military troops)   | Protects women and children  | Illegal                         |

| Country | Number of troops provided     | Legal regime on sexual abuse | Legal regime on prostitution |
|---------|-------------------------------|------------------------------|------------------------------|
| Malawi  | 854 (5.5% of military troops) | Protects women and children  | Legal (with restrictions)    |

<sup>\*94</sup>Source: *National legislation of countries in the Global Database on Violence against Women*.

This table shows that out of those 10 countries, 6 criminalize prostitution but 4 do not. Only 2 criminalize sexual violence on men while all of them criminalize sexual violence on women and minors. Thus, the situation is complicated and homogenous and will partly depend on nationality. For some peacekeepers, hiring prostitutes could not amount to a criminal offense but only be a violation of the Code of Conduct, reducing their liability and making it unlikely that they would ever be punished.

Furthermore, two out of ten countries (Uruguay and South Africa) implemented the Rome Statute, and thus war crimes and crimes against humanity, in their domestic legislation.

## Case study 2: UNMIL: A successful peacekeeping mission.

Liberia is a small country on the West African coast with a population of approximately four million people. It became independent in 1847 which makes it the first independent African republic. It was never colonized by European powers, which makes it an exception in the history of the continent alongside with Ethiopia and South Africa.

Liberia has a unique history: it was founded by the American Colonization Society (which itself was founded in 1816), a group who wanted to settle freed slaves from America in Africa so that they could have their own State. The group was made of people who opposed slavery and of slaveholders who believed African-Americans should be repatriated in Africa. One part of the group was in favor of freed slaves establishing their republic and gaining freedom in Africa while the other group wanted to avoid a rebellion<sup>95</sup>.

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<sup>94</sup> UN Women, *Global Database on Violence against Women, Country Profiles, Laws* (2019)

<sup>95</sup> PBS, "The Lone Star: the story of Liberia", 2002

After twenty years of creating settlements along the coast of West Africa, the settlers declared their independence (1847) and were recognized by the Great Powers soon afterwards. Liberia has kept the influence of America: its flag reassembles the one of the United States except it has only one star symbolizing liberty. It also based its political system and Constitution on the United States.

In the first decades of the history of Liberia, who named its capital Monrovia after United States. President James Monroe, recreated a small version of the United States in their country, building houses resembling Southern homes and speaking English (which is still the official language nowadays).

Benjamin Dennis, a Liberian who visited the country from the 1950's to 2000's, evokes a 'cycle of racism' in which the people of Liberia 'displacing their anger and resentment on the natives'<sup>96</sup> and organized a culture that revolved around the history of slavery. For instance, the upper class of American-Liberians in Liberia would use the expression 'Where is my Saturday?' when a visitor was expected to bring a gift to them, referring to times when slaveowners would distribute food supplies on Saturday in the U.S.<sup>97</sup>. Unfortunately, they recreated the system of domination they had found in America by terrorizing the local population and excluding them from every form of power. They founded the unique party of Liberia called the True Whig Party in 1869.

In 1980, Samuel Doe, who was a native of Liberia, took power by a *coup d'état* and established a military dictatorship in the country, putting an end to more than a hundred years of True Whig leadership. He installed a military dictatorship. When Charles Taylor, a former ally, staged a coup against Samuel Doe, it marked the beginning of the civil wars in Liberia. The First Liberian Civil War lasted from 1989 to 1996 during which Taylor gained control of a large part of the territory and was elected President of Liberia in 1997. The UN supervised the elections.

Growing opposition to his government provoked the outbreak of the Second Liberian Civil War in 1999.

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<sup>96</sup> Dennis, Benjamin. *Slaves to Racism : An Unbroken Chain from America to Liberia*, (edited by Anita Dennis, Algora Publishing), 2008: 26

<sup>97</sup> Ibid: 28

In 2001 the United Nations found out that Taylor was involved in the Sierra Leone conflict as a war lord and passed Resolution 1343, imposing an embargo on diamond and arms sale coming from Liberia and creating UNMIL<sup>98</sup>.

Meanwhile, the group Women of Liberia Mass Action for Peace started taking action to end the civil war, forcing Taylor to meet them and making him promise to go to peace talks in Ghana. They followed the delegation to Ghana, sitting outside the Presidential Palace, blocking all movement as long as no resolution was adopted. Among them was the future president Ellen Johnson Sirleaf and Nobel Peace Prize winner Leymah Gbowee<sup>99</sup>.

## **1. Timeline and brief history of UNMIL.**

The presence of the United Nations in Liberia dates back to 1993 when the first observer mission (UNOMIL) was installed, in cooperation with Economic Community of West African States (ECOWAS) in the midst of the First Liberian Civil War. In 1997, the United Nations Peace-building Support Office in Liberia (UNOL) was established to provide post-conflict peace-building, primarily to assist the Government with consolidating peace.

In 2003, the Security Council authorized the establishment of a multinational force in Liberia. The United Nations Mission in Liberia (UNMIL) was composed of political, military, police, criminal justice, civil affairs, human rights, gender, child protection, disarmament, demobilization and reintegration, public information and support components, as well as an electoral component<sup>100</sup>. UNMIL finished its mandate on 30 October 2018 after fifteen years of presence in Liberia.

At its peak, the mission had 15 000 troops. Its mandate has been changed by the Security Council 16 times<sup>101</sup>. When UNMIL was operating, it was a very powerful institution in a state of less than

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<sup>98</sup> [United Nations, "Security Council Resolution n°1343", S/RES/1343 \(2001\)](#)

<sup>99</sup> [Praying the Devil back to Hell](#), directed by Gini Reticker and produced by [Abigail Disney](#), 2008 (documentary)

<sup>100</sup> ["Background of UNMIL", United Nations, \(2018\)](#)

<sup>101</sup> ["UNMIL Facts", "United Nations", \(2018\)](#)

five million inhabitants as the UNMIL budget often exceeded the budget of the government during the civil wars.

The first success of UNMIL was that Ellen Johnson Sirleaf was democratically elected President after years of civil war. In July 2006, the generators powering street lights in Monrovia were switched on, after years without electricity and soon the economy was able to take off. Sirleaf was reelected in 2011. The elections were supervised of the United Nations. The following year, Moustapha Soumaré, acting Head of the mission declared that it was time for Liberians to ensure their own security. In 2017, new elections were peacefully held and George Weah was electing.

In 2018, in accordance with Security Council Resolution 2333, UNMIL finished its mandate during which it disarmed more than 100,000 ex-combatants, and collected more than 20,000 weapons and more than 5 million rounds of ammunition. It helped Liberia through the democratic process by assisting them in organizing legislative and presidential elections three times: in 2005, 2011 and in 2017.

UNMIL is also an interesting case because it is the first mission to deploy an all-female Indian Force Police Unit case. In 2007, aiming at the implementation of Resolution 1325<sup>102</sup> on the participation of women in peace building, the mission welcomed a unit of 125 women, an exception since only 4% of peacekeepers are female. Seeing the example of the women deployed in the unit, women in Liberia were inspired: the number of policewomen in the country rose from 6 to 17% while the unit was deployed.

## **2. SEA in UNMIL.**

From the beginning, UNMIL presented a high risk-factor for sexual violence in the mission since the conflict generated high rates of sexual violence. The UN reported that “between 61.4 and 77.4 percent of women and girls in Liberia were raped during the war<sup>103</sup>.” This figure is however highly contested as it originates from a study from the World Health Organization which used a sample of

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<sup>102</sup> [United Nations Mission in Liberia, "Hailed as 'role models,' all-female indian police unit departs UN mission in Liberia", \(2016\)](#)

<sup>103</sup> [Office of the High Commissioner for Human Rights, "Addressing Impunity for Rape in Liberia", \(2016\): §10](#)

women who they already knew were survivors of gender-based violence. Cohen and Green have argued that the number was inflated by researchers who struggle to keep the spotlight on the particular situation of the country they are covering. They argue that human rights defenders are « competing » with so many other catastrophes that they need « short-term drama » to maintain the interest of the international community<sup>104</sup>. This critique is similar to the one concerning the Democratic Republic of the Congo on the fact that the international community tends to respond to certain catastrophes more than others, which pushes people on the field to compete for global attention.

Although we do not know the exact numbers on sexual violence during the Liberian Civil Wars, it is clear that the problem was widespread and that rape was used as a weapon of war<sup>105</sup>. The rule of law, the judicial system are still not fully operational and cannot properly address those cases. While the national legislation protects everyone from sexual violence<sup>106</sup>, the legislation is difficult to implement: Only 4% of Liberians were registered by the State at their birth in 2007, and only a quarter of children under five had a birth certificate in 2018<sup>107</sup>, meaning that the State does not acknowledge the existence of a huge majority of its population. In spite of the Children Act from 2012 protecting children from sexual exploitation, it is almost impossible to assess someone's age if they were never registered.

Furthermore, customary laws prevail in rural parts of the country where national legislation is difficult to enforce<sup>108</sup>. According to the International Development Law Organization, criminal cases are underreported to the police and prosecutions are rare. According to their study, of all rape cases reported to one clinic in Montserrado, 0.2% of the cases were tried in court<sup>109</sup>. Moreover, prostitution is widespread in Liberia even though it is illegal.

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<sup>104</sup> [Dara Kay Cohen, Amelia Hoover Green, "Dueling incentives: Sexual violence in Liberia and the politics of human rights advocacy", 2012: 449](#)

<sup>105</sup> [Unicef, "Sexual violence as a weapon of war", \(1996\).](#)

<sup>106</sup> [Penal Code of Liberia "Chapter 14, Section 14.70 and 14.71", \(2006\)](#)

<sup>107</sup> [UNICEF, "The situation for children in Liberia", 2018.](#)

<sup>108</sup> [United Nations Population Fund Liberia, "Sexual and Gender Based Violence" \(2019\)](#)

<sup>109</sup> [International Development Law Organization, "Strengthening The Rule Of Law, Justice And Security In Liberia", 2017](#)

Most of the information we have concerning UNMIL pertains to the exploitation of children. In 2002, the report about West Africa jointly made by UNHCR and Save the Children came out, showing that children had been sexually abused on a large scale in the peacekeeping mission<sup>110</sup>.

When the first report came out in 2002, UNMIL had not been installed yet. They gave recommendations to the UNHCR which was installed, they recommended that trainings be organized for the staff among other measures.

In the second report by Keeping Children Safe, fifteen years later, the situation was assessed as having improved, which does not mean that the problem has disappeared. The authors approve of the fact that every peacekeeping mission "is required by United Nations Headquarters to have a sexual exploitation and abuse task force" but they also argue that people in the Headquarters are disconnected to the reality the staff lived in the mission.

They also approve of the training given to the staff which:

"is context-specific, and upholds and implements international and national laws and standards. UNMIL has to ensure that training goes beyond national standards, for example not ignoring homosexuality even though it is illegal in Liberia. There are concerted efforts to make training inclusive, and to ensure that everyone has access to the same information, in particular those who are not literate<sup>111</sup>."

Another important tool in eradicating sexual violence from UNMIL was the UNMIL Radio, the most popular radio in Liberia which reached 80% of the population, exceeding the BBC and was broadcast in English but also in local dialects. The Conduct and Discipline Team intervened monthly on the radio to remind the population of the rules of peacekeeping and of their rights<sup>112</sup>.

However, the authors stress that the mission should have had a training specific to the protection of children<sup>113</sup>.

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<sup>110</sup> Rosa Freedman, Sarah Blakemore, Camilla Barker, "Safeguarding Children from UN Peacekeeper Sexual Exploitation and Abuse in Liberia", (2017): 4

<sup>111</sup> Freedman, Blakemore and Barker: 10

<sup>112</sup> "UNMIL Radio", United Nations Mission in Liberia, 2018

<sup>113</sup> Rosa freedman, Sarah Blakemore, Camilla Barker, "Safeguarding Children from UN Peacekeeper Sexual Exploitation and Abuse in Liberia", 2017: 4

## Home country: Liberia

Article 14.70 of the Penal Code prohibits rape and having sex with a minor is automatically rape<sup>114</sup>. It was reformed in a new law amending the Penal Code in 2005. The history of amendment of the rape law in Liberia is simple and has little to do with international norms: the first elected woman President in Africa (ruling from 2006-2017) decided to amend the rape law. The new government did not amend the content of the law but made it a bailable offense, and argued that the rape law was too strict and therefore unconstitutional<sup>115</sup>. Prostitution is legal in Liberia. The age of consent has been raised to 18 in the same law of 2005.

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was signed by Liberia on 22 September 2004 but was not ratified yet, denying access to women in Liberia to directly seize the Committee of the CEDAW.

However Liberia, like the Democratic Republic of Congo, has ratified the Maputo Protocol of 2003. Women could seize the national courts of the African Commission of human rights. Of course, there are a lot of difficulties still surrounding the implementation of those laws and for victims to benefit from the justice system. In the case of a military peacekeeper, they could not seize it anyways because the home country has exclusive jurisdiction on the peacekeepers.

Regarding Resolution 1325:

"With the launching of its Action Plan for the Implementation of UN Security Council Resolution 1325 in 2009, Liberia became the first post-conflict country with a National Action Plan (NAP) to implement Resolution 1325 on women, peace and security. The significance of the resolution is that it urges the international community and UN Member States to enhance women's participation in peace processes. Liberia's NAP is expected to sustain and enhance women's peacebuilding efforts and take decisive steps towards gender equality and sustainable peace in Liberia. At the same time, women activists in Liberia are quick to point out that long before Resolution 1325 was adopted women's activism played an important and visible role in bringing an end to Liberia's civil war<sup>116</sup>."

## Troop contributing countries and laws on SEA

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<sup>114</sup> [Penal Code of Liberia "Chapter 14, Section 14.70", \(2006\)](#)

<sup>115</sup> All Africa, "Liberia: The Amended Version and Impact of the Rape Law On Victims", 2017

<sup>116</sup> [Ruth Gibson Caesar, Cerue Konah Garlo, Chitra Nagarajan and Steven Schoofs, "Implementing Resolution 1325 in Liberia: Reflections of Women's Associations", Initiative for Peace building, \(2010\)](#)

| Country    | Number of troops provided | Legal regime on sexual abuse | Legal regime on prostitution |
|------------|---------------------------|------------------------------|------------------------------|
| Bangladesh | 3184 (of military troops) | Protects women and children  | Legal                        |
| Pakistan   | 2747 (of military troops) | Protects women and children  | Illegal                      |
| Ethiopia   | 2551                      | Protects women and children  | Legal                        |
| Nigeria    | 1809                      | Protects women and children  | Depends on the region        |
| Namibia    | 865                       | Protects everyone            | Legal                        |
| Ghana      | 844                       | Protects women and children  | Illegal                      |
| Senegal    | 603                       | Protects everyone            | Legal                        |
| China      | 567                       | Protects everyone            | Illegal                      |
| Ireland    | 433                       | Protects everyone            | Legal                        |
| Ukraine    | 301                       | Protects everyone            | Illegal                      |

*\*Source: National legislation of countries in the Global Database on Violence against Women<sup>117</sup>.*

## Troop contributing countries and war crimes and crimes against humanity

In this chart we can see that 6 out of 10 countries allow prostitution while it is illegal in 4 countries. Only half of the countries protect men, women and children from sexual violence meanwhile the other half only protects women and children. Concretely, this means that peacekeepers could escape criminal liability depending on their nationality and the laws applicable in their country.

Furthermore, Ireland is the only country on the list that has ratified the Rome Statute and that has enacted into their national legislation the provisions of the ICC through the International Criminal Court Act of 2006.

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<sup>117</sup> UN Women, Global Database on Violence against Women, Country Profiles, Laws (2019)

In this chapter, it was concluded that the particular issue of sexual violence in conflict was only addressed after the conflict in Yugoslavia, and that the lobbying of diverse NGO's, which gave rise to the Orange the World campaign, played an important role in raising awareness by campaigning at the Vienna Conference on Human Rights of 1993. This created more enforceable mechanisms for women who are victims of violence and influenced States to take action.

Secondly, ad-hoc tribunals set up to try criminals during the conflict in Yugoslavia and Rwanda gave historic judgements which influenced the history of sexual violence in conflict, making it possible for sexual violence to become a war crime, a crime against humanity and even part of genocide. Those developments are important because new crimes in international humanitarian law means that individuals can be held liable in the International Criminal Court and that countries are likely to integrate them into their national legislation.

Thirdly, through the case studies, it was demonstrated that some aspects of the human rights framework have been implemented on the ground through trainings based on human rights law, through national legislation and regional mechanisms, the situation could still be improved in the future.

## **Chapter 2: Internal framework of the United Nations.**

Chapter 1 came to the conclusion that sexual assault and abuse became a relevant topic for the international community in the 1990's, both historically and in case law. Chapter 2 explores the history of the internal framework of the United Nations, through the establishment of the Office of Internal Oversight Services and through measures taken by the Secretary-General.

Given that the OIOS was created in 1994, this first part of the chapter looks into the questions if a link between the creation of the Office in 1994 and this new awareness can be established. Why did the United Nations create the OIOS in 1994 and not before or after? Was sexual abuse and exploitation already a priority of the Office at the time and how did it become one?

The second part of this chapter is dedicated to the more recent history of the OIOS Investigations division and achievements. This last, more technical part, will also be an introduction to the Haiti

case study as it will show what the concrete application of this framework looks like in a field mission.

## 1. From 1994 to 2005: founding years of the Office of Internal Oversight Services.

### 1.1 - Reason for creation: tensions with the United States.

The aim of this section is to determine if the topic of sexual violence and abuse was a cause of the creation of the Office of Internal Oversight Services. From the research in this thesis, it was not the case. The OIOS was in fact created as a result of tensions with the United States. Since they are the main contributors to the United Nations, they pushed for more effective and transparent administration, because they wanted to contribute to effective and transparent missions.

As shown in the introduction the first cases to ever surface concerning SEA in UN Peacekeeping missions date back to 1993 in Cambodia when the number of prostitutes rose drastically when the missions was installed from 6000 to 25 000. At the time the United Nations' response was to declare that "boys will be boys", advise the staff not to wear uniforms when going to brothels as well as shipping 800,000 condoms in fear of the spread of the HIV virus<sup>118</sup>.

From this example and the communication of the mission, we can assume that the United Nations in general was not sensitized to the issue of SEA in the early 1990's as it is now. However, we know that the issue became increasingly important to the UN after the Vienna Conference on Human Rights. It is therefore interesting to dive into the history of the creation of the OIOS and analyze what prompted the United Nations to seek more internal oversight within the organization in 1994 and if we can relate it to those cases of SEA in field mission.

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<sup>118</sup> Westendorf, Jasmine-kim and Louise Searle: "Sexual exploitation and abuse in peace operations: trends, policy responses and future directions", *International Affairs Volume 93, Issue 2*, (2017): 366

The Office of Internal Oversight Services (OIOS) was established following the resolution of the General Assembly 48/218 B in 1994<sup>119</sup>. This resolution was passed on demand of Secretary General Boutros Boutros Ghali, the 6<sup>th</sup> Secretary-General of the United Nations.

In testimonies and articles written from that time, one recurring fact is the tense relationship between Boutros Ghali and the United States. This is important information as the United States is obviously a huge influencer in the UN. The United States. opposed Boutros from the beginning, thinking he was arrogant as well as too closely tied to France<sup>120</sup>.

It can be argued that Madeleine Albright, then Ambassador to the United Nations, played a huge role in the creation of the OIOS. In *Madam Secretary*, her memoir, she describes her time as Ambassador to the UN in the 1990's<sup>121</sup>. She became Ambassador at a crucial time, when the end of the Cold War meant the end of the antagonism between the West and East which also meant that the United Nations was no longer blocked and its potential was ready to be unfolded.

Suddenly, the organization was expected to solve all international conflicts, in concordance with its mandate, and there were many. First, there was the crisis in Somalia, during which a joint operation of the U.S. and the U.N. resulted in the deaths of 18 Americans.

"In 1993 Boutros-Ghali told Albright he could not run the U.N. efficiently when Washington was not fully onboard. The U.S., he said, was his 'problem.' She cut him short: 'What you don't understand, Boutros, is that you are my problem.'"

This quote shows the beginning of the tensions between and illustrates the point that Boutros was made into a scapegoat by the Americans for their joint failure in Somalia. This incident would not be their only point of disagreement. The U.S. were already unhappy with the Secretary General and by extension the United Nations. The U.S. also wanted those costly peacekeeping operations financed by American taxpayers to be efficient, effective and transparent.

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<sup>119</sup> General Assembly, "Review of the efficiency of the administrative and financial functioning of the United Nations (A/RES/48/218)", 87th plenary meeting, (1993)

<sup>120</sup> Time, "The Rise and Fall of Boutros Boutros-Ghali at the U.N.", (2016)

<sup>121</sup> Madeleine Albright, *Madam Secretary*, (Miramax, 2003): 330-540

Karl Theodor Paschke, a German diplomat and the first director of the OIOS recalled that the U.S. started campaigning in New York for the creation of the office, which would be the equivalent of Government Accountability in the States of the *Cour des Comptes* in France<sup>122</sup>. We can already see that the OIOS the US campaigned for would be a financial institution and not an Office of accountability for disciplinary issues.

This campaign provoked a controversial debate between the U.S. and other Western countries and third world countries who thought this was a strategy to stop funding projects in their countries. The United States resorted to threatening the U.N. to withdraw 15% of their funds until the General Assembly would vote to establish the OIOS. According to Rashkow, an American lawyer who used to work for the US State Department, the Office would never have been created without that threat<sup>123</sup>. Indeed, all Member States are required to make payments to the United Nations, but the United States is by far the largest contributor. In 2017, it contributed to 22 per cent of the entire budget of the United Nations. In 1994, the U.S. contribution was 25 per cent<sup>124</sup>. The percentages of U.S. contributions are even higher for peacekeeping operations, which are widely supported by the American citizens. Because of those figures, it can be assumed that this threat played an important role for the establishment of the OIOS, as losing 15% of the U.S. contribution would have been detrimental to the organization.

## **1.2 - Very early years.**

This section examines the early years of the OIOS, which focused on financial issues, investigating fraud and preventing corruption. The shift to investigating sexual abuse happened in the 2000's, following the new scandals in U.N peacekeeping missions and Kofi Annan's Bulletin as Secretary General.

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<sup>122</sup> Ambassador Karl Theodor Paschke, "On the Efforts to Uphold Standards of Integrity Through the Work of the United Nations Internal Oversight Services", 2018 (video)

<sup>123</sup> Colum Lynch, "The U.N.'s Investigation Wars", Foreign Policy, 2015

<sup>124</sup> United Nations Secretariat, "Assessment of Member States advances to the working capital fund for the biennium 1994-1995, contributions to the United Nations regular budget for 1994 and of new member states contributions for 1993", (ST/ADM/SER.B/422), 1993

According to Karl Theodor Paschke, the first Under-Secretary-General in charge of the Office, the creation of the OIOS was difficult for everyone at the U.N., since it was the first time they were being held accountable internally since the creation of the organization. He reports that he had to spend a lot of time convincing countries in the developing world that the aim of the OIOS was not to work against them and defund their projects and that it was not a project of U.S. hegemony but that internal oversight was a normal part of the daily work of most public administrations<sup>125</sup>.

Bruce Rashkow expresses the same idea: "The creation of an internally independent office to investigate fraud, abuse, and waste within the organization, despite lip service to the objective, runs contrary to the culture and long practice of the U.N., whose instinctive reaction is to avoid embarrassment of the organization at all costs."

Paschke describes his surprise when he found out this would be the first time anyone from the staff would be investigated for fraud and related crimes. "When I arrived to New York I asked the Office of Personnel for relevant documentation about cases in the past where staff had acted against this standards; it turned out that no such case had ever been recorded. (...) During the first 50 years of its existence, ladies and gentlemen, the UN had happily lived with the assumption that in this huge bureaucracy, everybody was honest and without fault."

According to him, Boutros was a dedicated scholar in international law but not too interested in management, which made it difficult for him who had to invent everything from scratch. In the first annual report of the OIOS in 1995, the Office states that their priority concerning UN Peacekeeping operations in particular was financial matters:

"In the area of peace-keeping operations, emphasis is being placed on the start-up phase of operations, the procedures dealing with the end-of-mission phase, the safeguarding of assets, the reliability of financial and other information and compliance with existing rules, regulations and instructions<sup>126</sup>."

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<sup>125</sup> Ambassador Karl Theodor Paschke, "On the Efforts to Uphold Standards of Integrity Through the Work of the United Nations Internal Oversight Services", 2018 (video)

<sup>126</sup> General Assembly, "Report of the Secretary-General on the activities of the Office of Internal Oversight Services", (1995): §15

This paragraph shows that at the beginning, the Office was purely a body of internal oversight concentrating on finances. It worked like the American Government Accountability Office which is dedicated to examining how taxpayer money is spent.

We established that in 1995, at that time, the problem of SEA arose once again in Bosnia-Herzegovina, during the same conflict that created awareness in the international community and ad hoc tribunals set up by the United Nations. In Bosnia, evidence was found indicating that the personnel was frequenting brothels where women were being trafficked (dates). In that case, the UN refused to admit that peacekeepers had been directly involved into human trafficking<sup>127</sup>, despite evidence of the contrary brought by whistleblowers such as Human Rights Watch or Kathryn Bolkovac<sup>128</sup>.

### **1.3. The 2000's: The Secretary General Bulletin (2003) and Zeid Report.**

Sexual Abuse and Exploitation became a Category I crime for the OIOS to investigate in 2005. This section analyzes what led to this evolution and change. The conclusion is that two factors have prompted this evolution: a 2002 report about SEA committed by U.N. peacekeepers and other aid workers in West Africa and the personality of Kofi Annan as Secretary General (1997-2006).

In the early 2000s, whistleblowers brought attention to the situation in West Africa. An allegation came from two independent consultants from United Nations High Commissary for Refugees and the NGO Save the Children who released a report that same year in 2002. The report by Save the Children implicates the UN directly and declares that staff from NGOs and the U.N. are frequent abusers of children, using their position to exploit them<sup>129</sup>.

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<sup>127</sup> Westendorf, Jasmine-kim and Louise Searle: "Sexual exploitation and abuse in peace operations: trends, policy responses and future directions", 2017: 367

<sup>128</sup> Azer Slanjankic, "Bolkovac: 'UN tries to cover up peacekeeper sex abuse scandal'", Deutsche Welle, (2016)

Human Rights Watch, "Hopes betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution", Vol. 14, No. 9, (2002): 56

<sup>129</sup> UNHCR and Save the Children UK, "Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone", (2002)

A Office of Internal Oversight Services (OIOS) investigation in 2001 found evidence supporting these claims: they documented both sexual abuse (rape of boys by U.N. peacekeepers in Sierra Leone) and sexual exploitation (exchange of school fees or food against sexual favors). In 2002, Kofi Annan and the OIOS released a note to the General Assembly showing that evidence<sup>130</sup>.

In 2003, Kofi Annan released the Secretary General Bulletin on Special measures for protection from sexual exploitation and sexual abuse. It does not only include sexual violence but most relationships between U.N. staff and the local population:

"For the purposes of the present bulletin, the term "sexual exploitation" means any actual or attempted *abuse of a position of vulnerability, differential power, or trust*, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. " (emphasis added)

The Bulletin also states that having a sexual relationship with a minor below 18 constitutes sexual exploitation automatically.

It can be said that this measure was taken at that point in time, and not before, because of Kofi Annan's drive to reform the United Nations. It was also easier for him than for his predecessor as someone who had gone through the ranks of the organization. As Pashcke remarks he was "fully aware of the complexity of the organization." His interest in management but more importantly U.N. experience explains what led him to issue this Bulletin. As Human Rights Watch remarks: "Building on his experience as head of the Department of Peacekeeping Operations, he presided over a major effort to tackle sexual abuse and exploitation within UN peacekeeping, instituting a Zero-Tolerance Policy."

The 2003 Bulletin did not stop however the allegations of SEA which were increasingly important in the Democratic Republic of the Congo. Kofi Annan asked Prince Zeid to write a report on recommendations to eliminate SEA from U.N. peacekeeping missions.

## 2. From 2005 to 2015: Ten years of inspections and investigations.

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<sup>130</sup> Kofi Annan, "Investigation into sexual exploitation of refugees by aid workers in West Africa", Report of the Secretary-General on the activities of the Office of Internal Oversight Services (A/57/465), 2002

## 2.1 Concrete application of the Secretary General framework.

Kofi Annan invented the SG framework, what does it mean in reality or on the ground? To this day, the SG Bulletin sets out the rules and standards on which the missions are based. The strategy is based on prevention, enforcement and accountability. But accountability differs depending on the personnel category.

Since the early years there has also been progress regarding the specialization and expertise of personnel involved in the prevention and investigation of these cases. According to an archival document declassified after Kofi Annan's death, a Joint Inspection Unit in 2002 in the OIOS was composed of staff that was not specialized in internal oversight. Nowadays, more and more experts are involved in the process.

The first preventive measure that was taken was to create Conduct and Discipline Teams in 2005, both in field missions and the headquarters, mandatory for all U.N. personnel in every mission. The trainings happen pre-deployment and during deployment. Online training was also introduced in 2016. In case the mission presents a high risk factor (for example the MONUSCO), further measures have been introduced:

"restrictions of movement, curfews, requiring soldiers to wear uniforms outside barracks, designating off-limits areas, instituting non-fraternization policies, increased patrols around high risks areas and decentralization of conduct and discipline personnel into locations with a potentially high risk of misconduct<sup>131</sup>"

An additional measure was the vetting of increasingly more U.N. personnel: the process of vetting by the United Nations has increasingly been extended to all categories of civilian personnel, with records being kept in a Misconduct Tracking System (MTS) whose goal is to prevent individuals which have engaged in misconduct to move from a mission to another.

Civilian personnel faces the waiving of their immunity and prosecution by the host country and disciplinary measures by the United Nations if the Secretary General determines that the local government's judicial system is operational to conduct the trial. Other measures, taken directly by the United Nations include fines, suspension, dismissal and repatriation as well as inscription in the Misconduct Tracking System (MTS) database.

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<sup>131</sup> [United Nations, "Conduct in UN missions: prevention", 2019.](#)

## Case study 3 on the MINUJUSTH: Stabilizing mission in Haiti.

Haiti is a small country in the Caribbean sharing an island with the Dominican Republic. It has a population of 10 million people, roughly the same as its neighbor even though Haiti's territory is twice as small. When it was colonized by the French in the 17<sup>th</sup> century, the local population was exterminated and slaves were imported from West Africa to produce goods. The history of the country is also peculiar because it is the first colony to revolt against the French between 1791-1804 due to the social distribution of the island which was made of 90% slaves. They were inspired by the Declaration of the Man and the Citizen (1789) which was written in France during the revolution. Toussaint Louverture organized the slaves into armies. In 1794, after a war broke down opposing France to the British, Spain and the slaves, the French decided to issue a decree freeing all slaves on the island. This event destabilized the French and forced Napoleon to sell Louisiana, resulting in a territorial loss for the United States. Haiti therefore became the first country in the world to be founded by former slaves.

After the revolution, a huge gap developed between the French-speaking elite and the vast majority of Creole-speaking people. By the end of the 19<sup>th</sup> century, the United States started to gain significant influence in the country. Prior to World War I American business were extremely influent in the country. United States marines occupied the country from 1915 to 1934. There was already a dispute between Americans and Haitians. Americans argued that their presence was needed on humanitarian grounds meanwhile Haitians argued that the U.S. presence's aim was to secure American investments. Although Roosevelt withdrew the marines in 1934, the Americans indirectly retained control over the country until 1947. From 1947 to 1980, Haiti was the theatre of civil unrest in which they jumped from one authoritarian government to the next while the masses started to demand democracy and the relationship with the Dominican Republic was tense.

In contemporary history, from the 1980s on, Haiti struggled to establish a democratic state. Aristide rose as a leader but was overthrown by the 1991 Haitian coup d'état which marked the beginning of a military dictatorship headed Raoul Cédras. The United Nations imposed an arms embargo and sanctions on Haiti. The United Nations arrived on the ground in 1994 as human rights violations were increasing.

« Acting under Chapter VII of the Charter of the United Nations, authorizes Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership<sup>132</sup>»

This statement shows that the mandate of the mission was military since it was taken under Chapter VII of the Charter. Delegates from various countries denounced the resolution as an invasion of Haiti's sovereignty, remarking that there was no threat to international peace and security. However, some scholars argued that Haiti's sovereignty was not being violated and that on the contrary, the *de jure* government of the country was seeking the UN's assistance, the real government of Haiti being Aristide's<sup>133</sup>. The *New York Times* denounced the initiative of the Security Council at the time as a way for the United States to invade Haiti and restore Aristide, the leader they supported<sup>134</sup>. This question of legitimacy of peacekeepers on the ground of Haiti never ceased. "‘There's been an ongoing question over whether Haiti ever needed peacekeepers,’ said Jake Johnston, a research associate at the Center for Economic and Policy Research in Washington, D.C. ‘It's not a country with an ongoing civil war. It's not at war with any of its neighbors.’"

The question if peacekeepers are needed is not only linked to Haiti's history and the revolution of 1791-1804 but also to the invasion and occupation of the United States at the beginning of the 20<sup>th</sup> century: The existence of the mission itself is controversial as there is no ongoing armed conflict on the territory. Haitians have long perceived the mission as an invasion of their sovereignty<sup>135</sup>.

« World powers have always had a difficult time accepting Haitian sovereignty. When a slave revolt delivered Haiti independence from France in 1804, gunboat diplomacy ensured the liberated inhabitants would pay for their freedom. For the next 150 years, Haiti paid France a ransom for its continued independence. In the early 20th century, a new hegemonic power held sway, with U.S. Marines occupying the country for more than 20 years<sup>136</sup>. »

## 1. Brief history of MINUSTAH/MINUJUSTH

Although the UN was established in 1994 in the country, the establishment of a peacekeeping mission *per se* happened in 2004. A revolt erupted in the northern part of the country in 2004 which led to a coup d'état and the establishment of the MINUSTAH by resolution 1542. At the time, the

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<sup>132</sup> [United Nations, "Security Council Resolution n°940", S/RES/940, \(1994\)](#)

<sup>133</sup> [W. Michael Reisman, "Haiti and the validity of international action", Yale Law School, 1995: 83](#)

<sup>134</sup> [New York Times, "U.N. Resolution for Invasion of Haiti", \(1994\)](#)

<sup>135</sup> [Ann Simmons, "U.N. peacekeepers are leaving after more than two decades, but where does that leave Haiti?", Los Angeles Times \(2017\)](#)

<sup>136</sup> [Jake Johnston, "The U.N.'s Legacy in Haiti: Stability, but for Whom?", World Politics Review, \(2017\)](#)

MINUSTAH decided to include both police and military elements in the personnel, with a maximum of 1,622 Civilian Police and a maximum of 6,700 troops of military troops<sup>137</sup>. The goal of the mission was to establish a secure environment in which civil and political life could thrive and the rule of law would prevail. MINUSTAH lasted for thirteen years, cost billions of dollars and caused a controversial cholera outbreak.

In 2010, Haiti was ravaged by the biggest disaster in its history: an earthquake of 7.0 magnitude. The United Nations coordinated "As the extent of the catastrophe unfolded, United Nations Secretary-General Ban Ki-moon commented: "There is no doubt that we are facing a major humanitarian emergency and that a major relief effort will be required". The U.N. mobilized an emergency response team to help coordinate humanitarian relief efforts. The Security Council authorized an increase of 3,500 troops and police of the United Nations Stabilization Mission in Haiti in Resolution 1908 (MINUSTAH).

The mission was mainly backed by the United States and cost 343 million dollars a year. 2017 was also a year of renewal for Haitian domestic politics as elections were held with a new leader recognized by the United Nations as legitimate. The MINUSTAH generated several scandals involving sexual scandals and the Cholera scandal in 2010. The UN has been sued for bringing cholera into the country which has allegedly caused 5000 deaths. Scientists argued that since a cholera outbreak was underway in Nepal who sent peacekeepers to Haiti, it is highly probable that MINUSTAH brought the disease to the country after the 2010 earthquake.

In 2017, the MINUSTAH closed down and was replaced by the MINUJUSTH.

The MINUJUSTH is the successor of the MINUSTAH, the stabilization mission that was established in Haiti between 2004 and 2017. This new mission was established by resolution 2350 and was designed to be smaller than the MINUSTAH and composed exclusively of police and civilian personnel.

The mission in Haiti is unique because of its composition. Most peacekeeping missions are composed mainly of military personnel, meanwhile the MINUJUSTH is composed mainly of civilian personnel, depending on the internal framework because the situation was not military and did not require the deployment of soldiers but the expertise of civilian staff to rebuild the country after the earthquake.

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<sup>137</sup> United Nations, "Security Council Resolution n°1542" S/RES/1542, (2004) §4

In April 2019, the Security Council voted unanimously on closing down the mission in October 2019.

## **2. SEA in MINUSTAH**

According to the United Nations, the MINUSTAH was a mission particularly prone to SEA.

In terms of SEA, reports by the press have covered many horrific stories and human rights lawyers based in Port-au-Prince have also alleged to have found out about more cases than reported.

Mark Synder conducted a report in 2017 arguing that the problem in Haiti is persistent and systemic but also underreported. Investigating for 27 days the researcher found 42 victims willing to be interviewed. Given that he worked on his own, he argues that a team of professionals would find way more victims. The UN Conduct and Discipline team found 75 victims in total. This is largely explained by the fact that very few victims report SEA to the UN. For that reason, Synder believes that the United Nations is in fact wrong when they claim there has been a decrease of cases (in general, not only in the MINUJUSTH) and that the institutional mechanisms do not allow the U.N. to find out the truth. The investigator only interviewed female victims but Synder notes that many male victims have spoken out in the past and he suspects that none have come to testify for him because of the stigmatization of male victims.

"of 231 victims, only seven knew that the UN had any policy on sexual abuse, and none knew there was a reporting mechanism." This gives us an idea of the extent of underreporting that goes on in the missions.

In the case of the MINUJUSTH, they are left with only UN Police contingents, approximately 979. In the Synder report it is pointed out that SEA such as rape was conducted both by military contingents and by UNPOL, at the time of the MINUSTAH<sup>138</sup>. The other prohibited forms of sexual contact referred to as sexual exploitation also occurred, meaning many peacekeepers engaged in survival sex or prostitution in spite of it being prohibited by the UN Code of Conduct. The author also cites gender and race as reasons for the problem persisting.

The Institute for Justice and Democracy in Haiti is based in the United States and works closely with its affiliate the Bureau des Avocats Internationaux based in Port-au-Prince. Its work includes

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<sup>138</sup> Mark Snyder, "UN SEA: sexual exploitation and abuse at the hands of the United Nation's stabilization mission in Haiti", 2017

the cholera problem brought by the UN, SEA scandals and generally supporting human rights lawyers and their work in Haiti. It also has a lot of resources concerning the general situation of sexual violence in the country. A detailed report has been reported to CEDAW to assess the situation related to SEA in particular. They accuse the government of non-compliance with CEDAW in this 2016 report. In the Haitian legal system international treaties prevail domestic laws, meaning CEDAW and the UDHR prevail over any conflicting legislation.

Domestic law is rather vague on sexual assault given that the 2005 prohibiting rape (the first legislation criminalizing rape in the country's history) does not define what constitutes sexual assault or prohibit explicitly marital rape. Sexual harassment has yet to be criminalized. Similarly there are no laws regulating prostitution.

The fact that there are no laws on prostitution means that if a U.N. staff's immunity was waived for engaging in sexual exploitation, the person would not be prosecuted by Haiti. If the staff's home country does not prohibit prostitution either, there would not be criminal liability. This means that in that scenario, the only disciplinary measures available would be the ones of the United Nations: repatriation or dismissal. Similarly, for sexual assault the vague legislation in Haiti could exonerate the staff from responsibility even if the immunity was to be waived.

The implementation of CEDAW remains difficult because of historical reasons and a patriarchal society. Access to legal remedy is also difficult to attain for most of the population. The police is not cooperative and does not take reports seriously. Haiti has not ratified the Optional Protocol of the CEDAW<sup>139</sup>, which means that there is no way for Haitian women to directly seize the Committee on the Elimination of Discrimination Against Women.

The prevalence of rape has increased with the 2011 earthquake and the prevalence of internally displaced persons and camps where people had to live in where approximately 1 million people lived or more than 10% of the Haitian population. There are human rights defenders associations in the camps such as KOFAVIV, FAVILEK and KONAMAVID which also faced violence and the

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<sup>139</sup> United Nations Treaty Collection, "Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women", (2000)

threat of violence. Resolution 1325: Contrary to Liberia and the DRC, Haiti has not implemented a National Action Plan for the implementation of Resolution 1325.

### **3. SEA in MINUJUSTH**

Even though the OIOS report of 2015 only focuses on the MINUSTAH, it is interesting to dive into the history of MINUJUSTH and try to evaluate if the new installed mission, which will close in October 2019, witnessed the same problem and on the same scale. According to the British organization Keep Children Safe, the transition between MINUSTAH and MINUJUSTH was a revolution in the UN presence in Haiti. At the national level, the situation has vastly improved since 2004: the rule of law has been strengthened, but the justice system is still not fully operational. The organization remarks that MINUJUSTH ‘have also created and implemented their own range of measures, including: a code of conduct and terms of reference for its staff, anti-sexual exploitation and abuse measures, and anti-sexual exploitation and abuse focal points’ and ‘MINUJUSTH has also created a post of field Victims’ Rights Advocate who works across UN entities in Haiti and works with the UN VRA. These all address children within their work, but there is no central focus on child safeguarding as a stand-alone topic.’ ‘In MINUJUSTH the Special Representative of the Secretary-General (head of mission), the head of OHCHR, and CDT MINUJUSTH, and the Police Commissioner, alongside senior leaders within UN entities such as UNFPA, UN Women and UNICEF, have provided particularly strong leadership and emphasis on combatting sexual exploitation and abuse, and during our research demonstrated firm commitments to child safeguarding’ ‘CDT works with UN staff to understand why rules exist, rather than simply laying down those rules to staff who do not understand their purposes. To that end, it provides wallet-sized cards in many languages that set out the rules on sexual exploitation and abuse for all UN personnel. The Police Commissioner provides monthly training procedures for all their staff. The training is context-specific, and upholds and implements international and national laws and standards, using real scenarios to unpack and address complex issues’.

Learning from the lessons of the MINUSTAH, the MINUJUSTH implemented new measures but the initial problems of accountability remained. According to the U.S. State Department: « In contrast with 2017, there were no allegations of sexual exploitation and abuse by MINUJUSTH police officers and staff. MINUJUSTH officials attributed this in part to its zero-tolerance policy

that included training, raising awareness, and enforcement<sup>140</sup>. » This indicates a decline but does not take into account the underreporting of cases.

Therefore, Chapter 2 argues that OIOS was not created for the purpose of dealing with SEA in field missions, it became one of the Office's prerogatives from 2005 onwards. Concretely, this resulted in more preventive measures taken on the ground such as the vetting of all categories of personnel, the harmonization within the United Nations system of a database to prevent an offender to enroll in a new mission. The Code of Conduct was also based on the Secretary General framework with stricter rules such as the prohibition of engaging in prostitution even if the local laws allow prostitution due to the particular circumstances of peacekeepers in a post conflict situation or a humanitarian crisis. It also banned any relations with a minor aged less than 18 years old no matter the local laws on consent for the same reason.

## Conclusion

In conclusion, the alleged decline of the number of cases in SEA can be explained by several factors. Firstly, my argument is that the lobbying of diverse NGOs played an crucial role in raising awareness by campaigning at the Vienna Conference on Human Rights of 1993 which became a turning point in the history of addressing sexual violence in conflict at the United Nations. Because of their advocacy, sexual violence in conflict was explicitly recognized as a human rights violation. This breakthrough resulted in two crucial developments: the adoption of Resolution 1325 which is a point of reference for multiple organizations on the ground and ad-hoc tribunals set up to try criminals during the conflict in Yugoslavia and Rwanda gave historic judgements which influenced the history of sexual violence in conflict, making it possible for sexual violence to become a war crime, a crime against humanity and even part of genocide.

My argument is that governments are likely to implement those crimes in their national legislation even though it is not always the case. The threat of being condemned for war crimes and crimes against humanity could create more leverage for peacekeepers. I also argued that the implementation of Resolution 1325 on the ground led to significant changes such as the

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<sup>140</sup> [United States, State Department: "Country Report on Human Rights Practices - Haiti" \(2018\)](#)

establishment of a Gender Advisor in the mission in the Democratic Republic of Congo or influenced the United Nations to include women in the peace processes in Liberia.

Secondly, on the work instituted by the OIOS and by the Secretary General, I concluded that more preventive measures taken on the ground such as the vetting of all categories of personnel, the harmonization within the United Nations system of a database to prevent an offender to enroll in a new mission. The Conduct and Discipline Team took new action and different measures through the three pillars strategy of prevention, enforcement of the Code of Conduct, and remedies.

While those developments are encouraging, the clear limitation of this research is that it is difficult to assess the exact number of cases due to the under-reporting of cases. Further research could focus on how to implement stricter rules on the ground such as the database shared by all international organizations and in NGOs and more personnel dedicated to this task on the field missions.

## Appendix 1: Interview for further research

During a recent interview with a professional who worked on the Convention on the Elimination of All Forms of Discrimination Against Women in New York, she underlined that the word violence was not used in the Convention of 1979. She believes that the governments would not have been ready to integrate this term at the time which is why the delegates did not insist to ensure that the Convention would be passed.

However, she underlines that the Committee on the Elimination of Discrimination against Women, which meets regularly, has a very active dialogue on the question. She recalls that before 1985 (approximately), NGOs could only listen in sessions of the Committee and that nowadays they take an active part in the drafting of general recommendations. She underlines that recommendation n°19 and n°35 specifically address violence.

However, she believes that while the issue of violence against women is being discussed more openly, the situation has not improved generally and is stagnating. She argues that nowadays the data is updated and the issues are discussed but it does not mean that the violence is decreasing.

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