

South African peace mission personnel and sexual misconduct against women in the Democratic Republic of Congo: A Constructivist exploration of Norm Internalisation

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List of Abbreviations

AMIB	African Union Mission in Burundi
AU	African Union
CDAC	Conduct and Discipline Advisory Committee
CDU	Conduct and Discipline Unit
CoL	Circle of Leadership
DDR	Disarmament, demobilisation and reintegration
DIRCO	Department of International Relations and Cooperation
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of Congo
EU	European Union
FCDT	Field Conduct and Discipline Unit
FIB	Force Intervention Brigade
HRW	Human Rights Watch
IDP	Internally displaced people
IFI	International Financial Institutions
IGO	Inter-governmental organisation
IMF	International Monetary Fund
Military Disciplinary Act	Military Discipline Supplementary Measures Act of 1999
Military Disciplinary Bill	Military Disciplinary Supplement Bill
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
MONUC	United Nations Organisation Mission in Democratic Republic of Congo
MONUSCO	United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo
MOU	Memorandum of Understanding
NGO	Non-governmental organisation
OIOS	Office of Internal Oversight Services
ONUB	United Nations Operation in Burundi

ONUC	United Nations Mission in the Congo
PCC	Police contributing country
SABC	South African Broadcasting Corporation
SADC	Southern African Development Community
SANDF	South African National Defence Force
SEA	Sexual exploitation and abuse
SOFA	Status of Forces Agreement
TCC	Troop-contributing country
Trust Fund	Trust Fund in Support of Victims of Sexual Exploitation and Abuse (Trust Fund)
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
US	United States of America
Zeid Report	Comprehensive review of the whole question of peacekeeping operations in all their aspects

What are the main political dynamics in dealing with the sexual misconduct of South African personnel in the UN peace mission in the DRC? A Constructivist Exploration of Norm Internalisation.

1. Introduction

This research aims to explore the main political dynamics that occur when dealing with sexual misconduct perpetrated by United Nations (UN)-affiliated personnel during UN peace missions.

1.1. Research Problem

Sexual violence in conflict situations, especially when the alleged perpetrators are UN peace mission personnel, is not a new phenomenon but has been the subject of renewed public attention by media sources and the UN. Traditionally, conflict-related sexual violence was understood to be perpetrated by groups that are party to the conflict.¹ However, there has been an increased focus on inter-governmental organisation (IGO) peace mission personnel as the perpetrators of these crimes. This has generated renewed interest in the complex matters of accountability and discipline when it comes to crimes of a sexual nature.

According to the available public record data seen in Figure 1 below, there has been a steady decline in allegations of SEA following what was reported in the early 2000s. While the general trend of declining allegations could be argued to coincide with improvements in the UN's anti-sexual misconduct policies, that allegations continue to occur at all is still a concern.

¹ Dara Kay Cohen, "Explaining Rape during Civil War: Cross-National Evidence (1980-2009)," *American Political Science Review* 107(2013): 462-466.

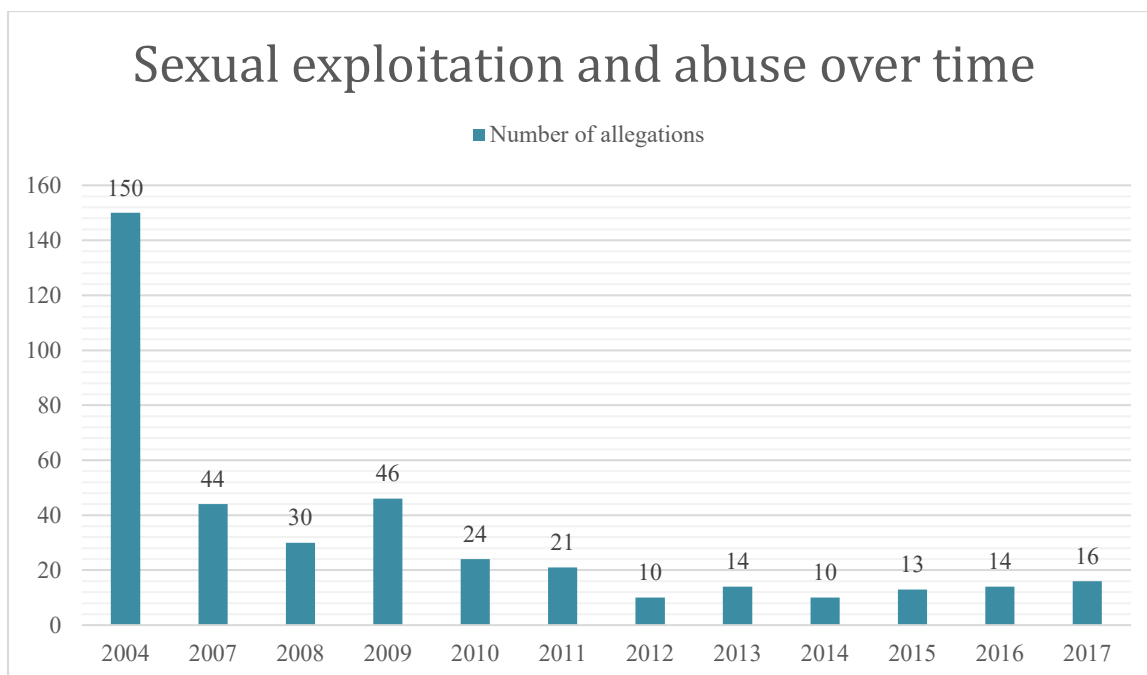


Figure 1: Sexual exploitation and abuse over time in MONUC/MONUSCO (Source: United Nations Conduct).

Although the UN online database does not contain data prior to 2007, a 2004 memorandum written by United Nations Organisation Mission in Democratic Republic of Congo (MONUC) officials referenced 150 allegations of sexual misconduct, which also included children who were raped and included in a child prostitution ring.² Furthermore, a 2016 Report of the Secretary-General indicates that 16 allegations were received relating to United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (MONUSCO) personnel, which do not correspond with the 14 allegations reported on the UN’s online misconduct database.³ Despite these minor discrepancies, Figure 2 illustrates that MONUC and MONUSCO are where the majority of allegations have occurred in recent

² Vanessa Kent, “Protecting civilians from UN peacekeepers and humanitarian workers: Sexual exploitation and abuse,” in *Unintended Consequences of Peacekeeping Operations*, ed. Chiyuki Aoi, Cedric de Coning and Ramesh Thakur (New York: United Nations University Press, 2007), 47; Bonnie Kovatch, “Sexual exploitation and abuse in UN peacekeeping missions: A case study of MONUC and MONUSCO,” *The Journal of the Middle East and Africa* 7(2016): 158; Kelly Neudorfer, ‘Reducing Sexual Exploitation and Abuse: Does Deterrence Work to Prevent SEAs in UN Peacekeeping Missions?’ *International Peacekeeping* 21(2014): 624; Sabrina Karim and Kyle Beardsley, ‘Explaining sexual exploitation and abuse in peacekeeping missions: The role of female peacekeepers and gender equality in contributing countries,’ *Journal of Peace Research* 53(2016):111.

³ United Nations, ‘Special measures for protection from sexual exploitation and sexual abuse,’ United Nations General Assembly document A/70/729, 16 February 2016, <http://undocs.org/A/70/729>.

years, with personnel deployed from South Africa receiving significant proportions of the allegations.

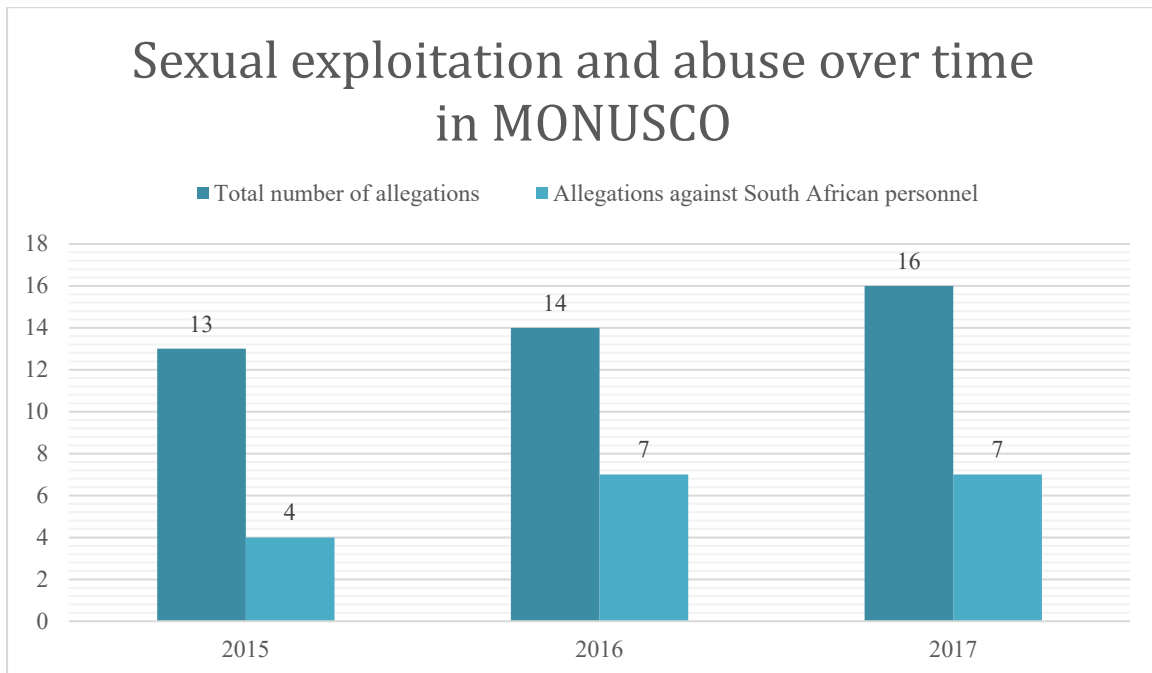


Figure 2: Sexual exploitation and abuse allegations made against South African military personnel in MONUSCO (Source: United Nations Conduct).

IGOs like the UN are of particular importance given their formal acceptance of norms, one of which concerns the appropriate behaviour towards women. When these organisations declare their belief in these norms about proper behaviour towards women, it is reasonable to expect their members to behave accordingly. In instances where this is not the case, and their behaviour appears at odds with their declared belief in the norm, we should be able to question why this is so.

The above information is just a brief overview; it demonstrates that addressing sexual misconduct is the joint responsibility of the UN and state of South Africa as the key actors in this process. The UN, as an international institution and “organisational platform” plays a crucial role in the establishment and practice of norms, or appropriate standards of behaviour, in international relations.⁴

⁴ Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52(1998): 899, Thomas Risse and Kathryn Sikkink, “The socialization of international human rights norms into domestic practices: introduction,” in *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University

In its peace missions, the UN as an organisational platform is a complicated alliance, involving contributing states who have volunteered their services; the host state; the UN Security Council, the author of the mission mandates; the UN Peacekeeping Office (DPKO); and the mission in a country. However, the UN's personnel in "coalitions of the willing"⁵ have not escaped scrutiny for sexual misconduct. In fact, in scholarship, there is an increased acknowledgement that UN personnel in peace missions are perpetrators of sexual misconduct towards women. This raises the issue of how the senior partner in a mission, responsible for good conduct, deals with the sexual misconduct of contributing countries.

Although the UN has an extensive framework to address sexual misconduct through its 'zero-tolerance' policy,⁶ the onus is on the troop contributing country (TCC) to ensure that its contributed personnel behave in accordance with UN standards and hold them accountable when they do not. The purpose of this research is to explore and analyse the main political dynamics between South Africa as a TCC and the UN in dealing with sexual misconduct against women by South African personnel deployed in the UN's DRC peace mission.

Most South African personnel deployed in UN peace missions have been part of MONUSCO, which was established in June 2010 and is currently the largest UN peace mission,⁷ and its predecessor, MONUC. South Africa is one of the largest African TCCs and the third largest overall troop contributor for MONUSCO, having provided 1,161 military personnel.⁸

South Africa has declared its belief in and support of the norm that sexual abuse and exploitation of women is unacceptable behaviour.⁹ Yet a high number of allegations and

Press, 1999), 7; Annika Björkdahl, "Promoting norms through peacekeeping: UNPREDEP and conflict prevention," *International Peacekeeping* 13(2006): 215.

⁵ Shepard Forman and Derk Segaar, "New Coalitions for Global Governance: The Changing Dynamics of Multilateralism," *Global Governance* 12(2006): 207.

⁶ "Standards overview," United Nations Conduct, accessed 18 March 2018, <https://conduct.unmissions.org/standards-overview>.

⁷ "MONUSCO Fact Sheet," United Nations Peacekeeping, accessed 12 January 2018, <https://peacekeeping.un.org/en/mission/monusco>.

⁸ Ibid.

⁹ Signe Marie Cold-Ravnkilde and Thomas Mandrup, "When Peacekeepers do Damage: Sexual exploitation and Abuse in the Democratic Republic of Congo," Danish Institute for International Studies Policy Brief (2017): 3, <https://www.ethz.ch/content/specialinterest/gess/cis/center-for-securities-studies/en/services/digital-library/publications/publication.html/bbe4b4eb-5005-4fe9-935a-96d4ce289677>.

3; United Nations, "Update on Allegations of Sexual Exploitation and Abuse in United Nations Peacekeeping Operations and Special Political Missions," 17 May 2016, 3; United Nations General Assembly, "Special measures for protection from SEA," 29.

instances of sexual abuse and exploitation by South African personnel in MONUC and MONUSCO is a matter of public record. Media reporting has singled out South African UN personnel as being particularly ill-disciplined, which is to an extent supported by UN data since the UN began keeping record on the nationalities of the alleged perpetrators in 2015 (see Figure 2 above). However, when looking at the data concerning allegations, it is important to note that these rates are relative. A TCC with fewer allegations may have a higher rate of misconduct because they have a smaller fraction of the personnel.

Another reason that South Africa is included as a focal actor is because it is a newly democratic state. According to Acharya, newly democratic states may accept global norms as part of national identity-construction and the legitimation of new practices.¹⁰ In the aftermath of apartheid, South Africa needed to construct a new, post-racial national identity and demonstrate that they were no longer an international pariah. Adopting certain international norms including standards of what is considered appropriate behaviour towards women is one way to construct a national identity that is consistent with the shared values of the international community and receive international legitimacy. This demonstrates the constitutive role that norms can play.

Sexual misconduct and violence are a violation of international multiple norms and international law. Additionally, sexual misconduct by peace mission personnel undermines peace missions in other ways. Peace missions are complex operations that involve a large number of human and financial resources. Between 1999 and 2014, MONUC and MONUSCO jointly cost approximately USD 10 billion.¹¹ Personnel that commit crimes against vulnerable populations violate the trust, and erode the local confidence, that is necessary for such large operations to be effective and achieve their mandates. These malpractices ultimately “defeat the purpose of their mission”.¹²

Furthermore, sexual crimes committed against civilians violate international and legal norms concerning civilian immunity during conflict. However, this research focuses on the sexual abuse and exploitation of women because they are women, not because they are civilians in a

¹⁰ Amitav Acharya, “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism,” *International Organisation* 58(2004): 247.

¹¹ “MONUSCO at a Glance,” United Nations Organisation Stabilization Mission in the Democratic Republic of Congo, January 2016, https://monusco.unmissions.org/sites/default/files/global_factsheet._eng.pdf.

¹² Elizabeth F. Defeis, ‘U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity,’ *Washington University Global Studies Law Review* 7(2008):187.

conflict-zone, although there is certainly an overlap in these normative frameworks. It is therefore important not only to hold perpetrators of such crimes accountable, but also to ensure that there exist sufficient measures aimed at protecting women by deterring potential perpetrators from committing such crimes.

Any examination of the misconduct of peace mission-personnel cannot focus solely on the UN. Although the UN sets the overarching framework within which contributed personnel must operate, the UN has limited enforcement authority. The variances in assault allegation data alone cannot be used as a means to evaluate policy effectiveness, nor does it explain the failure of peacekeeping forces to comply with UN policies. This is where the issue of political dynamics in addressing sexual misconduct becomes most important.

Following allegations of abuse of refugees in West Africa and an Office of Internal Oversight Services (OIOS) investigation, Kofi Annan, then-UN Secretary General, signed a bulletin (ST/SGB/2003/13) which marked the introduction of the zero-tolerance policy. This bulletin reinforced pre-existing commitments to international humanitarian law by UN personnel by outlining the institutional policy on the prohibition of SEA-related activities.¹³ Sections 3.2(a) to 3.2(f) outline a comprehensive list of prohibited activities, namely: any sexual activity with a child; exchanging sexual activities for monetary or other goods and services; and sexual relationships between UN staff and aid beneficiaries.¹⁴ Following the issuance of the Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse, it was required that all missions track and report SEA allegations made against their personnel. However, subsequent investigations found that there were “widespread allegations of rape, abuse, and prostitution”, in the DRC.¹⁵ To date, allegations of sexual misconduct continue to be made against UN personnel despite the extensive UN policy framework and zero-tolerance policy.

Constructivists provide one approach to explore the question of the difference between what people declare their beliefs to be and what their actual behaviour is. The main intention of

¹³ United Nations Secretariat, “Special measures for protection from sexual exploitation and sexual abuse,” United Nations Secretariat document ST/SGB/2003/13, 9 October 2003.

¹⁴ *Ibid.*, 2.

¹⁵ Kovatch, 160.

Constructivism is to analyse the role of norms on the stage of world politics.¹⁶ In this approach, norms are defined as, “the collective expectations about proper behaviour.”¹⁷ According to Finnemore and Sikkink, international norms emerge and spread in three stages: Norm Emergence, Norm Cascade, and Norm Internalisation.¹⁸ Norm Emergence is when norm entrepreneurs – those who are the initial advocates for new norms – try to persuade states to adopt their new norm. The second stage, Norm Cascade, is characterised by norm leaders convincing states to follow new norms through socialisation. States may also embrace new norms for other reasons, including legitimacy, conformity or enhanced self-esteem.¹⁹

Sexual abuse and exploitation of women has been recognised by the international community as unacceptable behaviour, as is evidenced by several UN General Assembly (UNGA) resolutions that condemn all forms of violence against women.²⁰ Thus, Norm Emergence and Cascade have occurred. The focus in the Norm Life Cycle must therefore shift to Norm Internalisation. Norm internalisation underlines the importance that actors accept the norm as appropriate for themselves and behave accordingly.²¹

Thus, the current research aims to explore the political dynamics in the UN-South Africa interaction in dealing with the sexual abuse and exploitation of women by South African personnel deployed in MONUC and MONUSCO. This exploration will examine the role of Norm Internalisation by especially South Africa. The concept of norm internalisation is underpinned by Constructivism. A theoretical case study design/format will be utilised in this study.

¹⁶ David M. Jones and Mike L. Smith, “Noise but No Signal: Strategy, Culture, and the Poverty of Constructivism,” *Studies in Conflict and Terrorism* 24(2001): 487-488.

¹⁷ Ronald L. Jepperson, Alexander Wendt and Peter J. Katzenstein, “Norms, Identity and Culture in National Security” in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (New York: Columbia University Press, 1996), 54.

¹⁸ Finnemore and Sikkink, 895.

¹⁹ Ibid.

²⁰ “UN Resolutions on Violence against Women,” Stop Violence Against Women, accessed 30 October 2018, http://www.stopvaw.org/un_resolutions_on_violence_against_women.

²¹ Finnemore and Sikkink, 895.

1.2. Concepts

1.2.1. Sexual Misconduct in Relation to Women

The UN and academic literature alike make use of the umbrella term sexual exploitation and abuse (SEA) to refer to the majority of crimes and prohibited actions associated with sexual violence by UN personnel.²² However, although the umbrella term is used, both sexual exploitation and sexual abuse are distinct terms. Sexual abuse includes all sexual activities with persons under the age of 18, as well as the “actual or threatened physical intrusion of a sexual nature by force or under unequal or coercive conditions.”²³

The UN separately defines sexual exploitation as the attempted or actual abuse of position for sexual purposes, including transactional sexual relations, their solicitation as well as any other kind of exploitative relationship.²⁴ These definitions will be used in this study as they are relevant within the context of the primarily UN prescribed codes of conduct on prohibited sexual behaviour.

The allegations levied against UN personnel generally and in the DRC specifically, indicated that there were more allegations of sexual exploitation than there were of sexual abuse. Between 2010 and 2018 in the DRC mission, there were 110 allegations of sexual exploitation, 83 allegations of sexual abuse and 7 allegations involving both sexual exploitation and sexual abuse.²⁵

It is important to clarify that this study will not take into account incidents of sexual harassment, which are distinct from incidents of SEA, and refer to prohibited behaviour in the workplace committed against UN personnel. Instead, this study intends to focus on SEA offences committed *by* UN personnel against local women that are not affiliated with the UN. UN victim data focuses on the age of victims and does not specify their gender. However, sexual violence in conflict is typically understood to be committed by men affiliated with military groups. In the absence of reliable data on the gender of victims, this study will work

²² “Glossary,” United Nations Conduct, accessed 23 October 2018, <https://conduct.unmissions.org/glossary>.

²³ Ibid.

²⁴ Ibid.

²⁵ “Sexual Exploitation and Abuse,” United Nations Conduct, accessed 23 October 2018, <https://conduct.unmissions.org/sea-data-introduction>.

on the pre-existing assumption that the victims of sexual violence are primarily women and girls.

1.2.2. Peace Missions

Peace mission is the term used collectively to refer to the full spectrum of peace and security related activities with an aim of upholding peace.²⁶ A range of actors can undertake peace missions under the mandates of the UN or regional organisations individually or in collaboration. This study will be limited to the UN's peace mission framework as outlined by the DPKO. While it may appear that there is a linear progression between peacemaking, peacekeeping and peacebuilding, this is not often the case. The DPKO has taken the position that these types of peace missions are “mutually reinforcing”,²⁷ highlighting that their implementation in isolation is less likely to yield the desired results of sustained peace.

1.2.2.1. Peacemaking

Peacemaking in its most simple DPKO conception refers to actions that are intended to “bring hostile parties to agreement.”²⁸ These actions can include the diplomatic provision of good offices, or any other diplomatic actions that facilitate negotiations between the parties in the conflict.²⁹ Because of this, the actors involved range from UN representatives to governments and NGOs to prominent individuals.³⁰

1.2.2.2. Peacekeeping

UN peacekeeping missions aim to develop and foster the conditions for sustainable, lasting peace by supporting the underlying political processes, for example, a peace agreement, that makes peace possible.³¹ Peacekeeping is a tool that comes into play when there is some kind of peace to maintain. This is typically after the fighting has stopped and a peace agreement is

²⁶ Maxi Schoeman, “Foreign Policy and the Military: In Service of Reconstruction and Development?” in *Post-conflict Reconstruction and Development in Africa: Concepts, role-players, policy and practice*, ed. Theo Neethling and Heidi Hudson (Claremont: UCT Press, 2013), 209.

²⁷ United Nations, *United Nations Peacekeeping Operations: Principles and Guidelines*, (New York: United Nations Secretariat, 2008), 20.

²⁸ *Ibid.*, 98.

²⁹ *Ibid.*, 17.

³⁰ *Ibid.*, 17-18.

³¹ “What is peacekeeping,” United Nations Peacekeeping, accessed 25 October 2018, <https://peacekeeping.un.org/en/what-is-peacekeeping>.

in place, which the peacekeepers observe or help to implement.³² Traditional peacekeeping has also been deployed to serve as a buffer between conflicting parties and limit the violence.³³

Peacekeeping is underpinned by three principles: all involved parties must consent, the mission must be impartial and the use of force is only permissible to defend the operation's mandate and for self-defence.³⁴ Peacekeeping differs from peace enforcement as it is not mandated to use coercion or military force in order to restore peace and security in situations where it has been authorised by the UN Security Council (UNSC).³⁵

Peacekeeping missions grounded in two legal agreements that are signed by all the consenting parties to the mission: a memorandum of understanding (MOU) signed by the UN and the troop or police contributing countries (TCCs or PCCs), and a status of forces agreement (SOFA) which is signed by the UN and the host country. These documents grant the TCC exclusive jurisdiction over prosecution and discipline of members of their forces and immunity from prosecution by the host nation for violation of their law.³⁶

The participants in peacekeeping operations are typically classified as 'peacekeepers'. Peacekeepers have moved away from a military-heavy composition as the nature and mandates of peacekeeping missions become more complex, dynamic and robust. Peacekeepers fall into three broad categories of personnel: military, police and civilian – all of whom contribute different skill sets and expertise to the overall mandate of the mission.³⁷ Military and police personnel are derived from the national military or police contingents of their countries of origin, and their primary affiliation remains with their national contingents

³² United Nations, *United Nations Peacekeeping Operations*, 18.

³³ Paul F. Diehl, *Peace Operations* (Cambridge: Polity Press, 2008), 4.

³⁴ "Principles of Peacekeeping," United Nations Peacekeeping, accessed 25 October 2018, <https://peacekeeping.un.org/en/principles-of-peacekeeping>.

³⁵ United Nations, *United Nations Peacekeeping Operations*, 18.

³⁶ Carol Allais, 'SEXUAL EXPLOITATION AND ABUSE BY UN PEACEKEEPERS: THE PSYCHOSOCIAL CONTEXT OF BEHAVIOUR CHANGE,' *South African Journal of Military Studies* 39(2011): 8.

³⁷ "Our Peacekeepers," United Nations Peacekeeping, accessed 25 October 2018, <https://peacekeeping.un.org/en/our-peacekeepers>.

throughout their secondment to work under UN command and control during peacekeeping missions.³⁸

1.2.2.3. Peacebuilding

Peacebuilding involves the strengthening of local institutions and capabilities in order to prevent resurgences of violence by addressing the “root causes of conflict” and “lay the foundation of sustainable peace and development.”³⁹ Peacebuilding is also referred to as multidimensional peace missions and involve large civilian elements.⁴⁰ Although there may be temporal overlaps in peacekeeping and peacebuilding, peacebuilding is a long-term process that aims to restore the state’s ability to perform its functions adequately.⁴¹

1.3. Literature Review

This research will draw on academic literature on Constructivism as the theoretical framework as well as the norm life cycle as outlined by Finnemore and Sikkink and the third stage, Norm Internalisation.⁴² The DPKO additionally noted that SEA does not occur in a vacuum and that to address it would require more than institutional and policy interventions, but also changes in the culture and attitudes held within peacekeeping missions.⁴³

Because the problem of SEA crimes by peacekeepers is an issue that jointly concerns the UN and the TCC, this section will look generally at the UN structures and literature more broadly related to the problem of peacekeeper sexual misconduct. Following this, it will look at South Africa specific literature and the trends therein, given that South Africa is the focal case study for this research.

³⁸ “Military,” United Nations Peacekeeping, accessed 25 October 2018, <https://peacekeeping.un.org/en/military>; “UN Police,” United Nations Peacekeeping, accessed 25 October 2018, <https://peacekeeping.un.org/en/un-police>.

³⁹ United Nations, *United Nations Peacekeeping Operations*, 18; Diehl, 9.

⁴⁰ Diehl, 14.

⁴¹ United Nations, *United Nations Peacekeeping Operations*, 18-19.

⁴² Finnemore and Sikkink, 895.

⁴³ Anna Shotton, “A Strategy to Address Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel,” *Cornell International Law Journal* 97(2006): 103-104.

1.3.1. The United Nations and Sexual Misconduct in Peace Missions

It is perhaps most important to note that this study is not concerned with the phenomenon of rape as a tool or weapon used by parties in conflict during warfare, as that is an entirely different issue which is dealt with separately in the academic literature. Sexual violence committed by combatants in the DRC is also of a different nature, with gang rapes, genital mutilation and forcing family members to watch these incidents being far more common.⁴⁴

However, there still exists a significant body of literature on the topic of sexual misconduct by peacekeeping personnel in UN missions, specifically, and there is a general consensus among scholars that SEA violates the trust necessary for peacekeeping missions to be effective.⁴⁵ As well as the presence of several UN produced reports on the topic of sexual misconduct. The academic literature, to a large degree, includes discussions on the 2005 Comprehensive review of the whole question of peacekeeping operations in all their aspects (Zeid Report).⁴⁶ There is also literature that notes the attempts that UN has made to address the problem, for instance, by 2007, the UN had dismissed or repatriated a total of 170 military, civilian and police personnel following investigations.⁴⁷ In fact, the commissioning of the Zeid Report itself was an intervention to address noncompliance with the earlier issued Secretary General's bulletin on preventing sexual assault.⁴⁸ Thus, while the zero in zero tolerance has not yet been fully actualised, it is undisputed that the UN has dedicated resources and efforts to addressing the ongoing issue of sexual misconduct in its missions.

Scholars have written on the shortcomings of the UN to enforce its zero-tolerance policy. The UN maintains a set of rules and guidelines to which UN staff must comply, failure of which may result in disciplinary procedures.⁴⁹ However, the zero tolerance policy is ambiguous on the legal applicability of the document on certain categories of peacekeeping personnel.⁵⁰ For

⁴⁴ Marion Pratt, Leah Werchick, Anaia Bewa, Marie-Louise Eagleton, Claudine Lumumba, Katherine Nichols and Lina Piripiri, "Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo," USAID/DCHA Assessment Report (2004), 7, https://pdf.usaid.gov/pdf_docs/pnadk346.pdf.

⁴⁵ Defeis, 187; Shotton, 101.

⁴⁶ United Nations General Assembly, 'Comprehensive review of the whole question of peacekeeping operations in all their aspects,' United Nations General Assembly document A/59/710, 2 March 2005.

⁴⁷ Noelle Quénivet, "The Dissonance between the United Nations Zero-Tolerance Policy and the Criminalisation of Sexual Offences on the International Level," *International Criminal Law Review* 7(2007): 662-663.

⁴⁸ Shotton, 102.

⁴⁹ Quénivet, 663.

⁵⁰ Kovatch, 160; Quénivet, 662.

example, personnel including contractors, consultants, experts and military observers are not considered UN staff and are therefore not bound by the same regulations.⁵¹

Several UN documents provide information about the so-called ‘zero-tolerance’ policy towards sexual abuse and exploitation, with the Zeid Report serving as the foundational document. UN policies and bulletins typically stress the prohibition of any kind of sexual relationship between UN personnel (which include but are not specifically limited to peacekeepers) and beneficiaries of aid and children, as well as prohibiting any kind of transactional sexual relationship.⁵² However, these general UN policies do little to go beyond mentioning general prohibitions and measures installed at the levels of the secretariat, DPKO or at Mission level.

In general, peacekeepers tend to be male. In 2006, of the 71,673 military personnel in peacekeeping missions, only 1,034 of them were women.⁵³ As at 31 January 2018, the UN had a total 78,376 military personnel, 3,090 of whom were women.⁵⁴ The presence of a disproportionate amount of men in peacekeeping operations leads to a hyper-masculine environment where abusive behaviour is often dismissed.⁵⁵ Thus, the literature frequently addresses the issue of problems arising from the male-dominated composition of forces and discussions on the role that more gender-balanced forces can play in curbing abuse by peacekeepers, as well as increasing the reporting of crimes. Since the early 1990s, UN missions in countries including Bosnia, Haiti, Mozambique, Kosovo and Cambodia demonstrated that peacekeeping missions increase the demand for prostitutes.⁵⁶ Increased education and training as well a more gender-balanced force has been put forward to help address these challenges. A significant body of the literature on peacekeeping and sexual misconduct questions the potential role that increased female peacekeepers could play. The reasoning behind an increased female contingent is that local women are more likely to

⁵¹ Quénivet, 663-664.

⁵² “Glossary,” United Nations Conduct.

⁵³ Defeis, 191.

⁵⁴ “Summary of Troop Contributions to UN Peacekeeping Operations by Mission, Post and Gender,” United Nations Peacekeeping, accessed 14 January 2018, <http://peacekeeping.un.org/sites/default/files/gender.pdf>.

⁵⁵ Defeis, 191; Donna Bridges and Debbie Horsfall, “Increasing Operational Effectiveness in UN Peacekeeping,” *Armed Forces & Society* 36(2009): 121-122.

⁵⁶ Kent, “Protecting civilians from UN peacekeepers and humanitarian workers,” 45.

confide in female peacekeepers and local women also more likely to become involved in community peacebuilding initiatives.⁵⁷

The prohibition of transactional sexual relationships has also resulted in an academic debate on the use of prostitutes and sex workers during peacekeeping operations, the prohibition of which – according to Defeis – is not generally supported by peacekeepers, who tend to be predominantly male.⁵⁸ However, the role that prostitutes can play to curb sexual violence by peacekeepers is not a focus area in this research, despite its potential for future academic discussion.

The literature also identifies some of the causes of peacekeeper sexual misconduct. Underlying issues identified include cultures of impunity and hyper-masculinity amongst peacekeepers;⁵⁹ suppression of whistle-blowers and resisting external investigations;⁶⁰ immunity from prosecution of peacekeepers by the host nation;⁶¹ exclusive jurisdiction for prosecution by the TCC;⁶² and, the inability for some TCCs to conduct courts-martial on site.⁶³ These are all significant challenges that must be adequately addressed in order to prevent ongoing sexual predation.

There is also a number of articles that refer to the legal framework and legal questions of accountability surrounding crimes of a sexual nature committed by peacekeepers.⁶⁴ The question of accountability is one of the key issues that raises challenges as the UN has created a comprehensive set of rules governing the conduct of peacekeeping personnel. The disciplinary processes and regulations, however, vary by mission and rank.⁶⁵ Additionally, legal scholars have argued that the documents that comprise the UN's zero tolerance framework do not accurately mirror international legal standards regarding crimes of a sexual

⁵⁷ Henry F. Carey, “‘Women and peace and security’: The politics of implementing gender sensitivity norms in peacekeeping,” *International Peacekeeping* 8(2001): 53-54.

⁵⁸ Defeis, 192.

⁵⁹ *Ibid.*, 191.

⁶⁰ Neudorfer, 626.

⁶¹ Allred, 9.

⁶² *Ibid.*, 8.

⁶³ *Ibid.*, 11.

⁶⁴ Tomas Macura, ‘Accountability and Protection of UN Peacekeepers in Light of MONUSCO’ *Die Friedens-Warte* 88 (2013): 143; Muna Ndalo, “The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions,” *Berkeley Journal of International Law* 27(2009): 127; Shayna Ann Giles, “Criminal Prosecution of UN Peacekeepers: When defenders of Peace Incite Further Conflict Through Their Own Misconduct,” *American University International Law Review* 33 (2017): 164.

⁶⁵ Defeis, 193.

nature.⁶⁶ This is exacerbated by the fact that TCCs are individually responsible for their troops' conduct and discipline.⁶⁷ The pursuit of legal accountability is also hindered by the UN's characterisation of certain crimes as 'sexual abuse', a term which is not recognised in international criminal law.⁶⁸

However, despite institutional limitations that prevented the recommendations of the Zeid Report from being implemented fully, it is worth noting that since 2007 the general trend was that the number of reported SEA incidents was declining. Some arguments for the decline in reported sexual misconduct included references to a higher likelihood of punishment for perpetrators as an effective deterrent. NGOs such as Code Blue Campaign also undertake significant research on the issue of peacekeeper misconduct, with a focus on ending peacekeeper impunity.⁶⁹

1.3.2. South Africa and Sexual Misconduct in Peace Missions

Some of the larger TCCs for MONUSCO, where SEA crimes are currently most prevalent, such as Bangladesh and Pakistan, are not identified as major perpetrators of SEA crimes in UN data. However, South Africa as a single TCC has the highest proportion of SEA allegations against its personnel, which suggests that sexual misconduct is not committed by all peace mission personnel at similar rates. This is what motivates this study's specific focus on South African personnel as perpetrators of the SEA.

Compared to the available literature on sexual misconduct by UN peacekeepers in general, there is far less literature available which focuses on South Africa's attempts at dealing with misconduct from its personnel. South Africa's contributions to multilateral peacekeeping operations have degenerated resulting in a reputation for their ill-discipline which although having been given renewed attention in media reporting,⁷⁰ is not a contemporary issue. According to Neethling, between 2002 and 2006, South African peacekeepers were found

⁶⁶ Quénivet, 667.

⁶⁷ Defeis, 194.

⁶⁸ Quénivet, 669.

⁶⁹ "The Problem," Code Blue Campaign, accessed 18 February 2018, <http://www.codebluecampaign.com/the-problem/>.

⁷⁰ Khadija Patel, "Peacekeepers behaving badly: Why South African ill-discipline in the DRC is a UN problem," *Daily Maverick*, 14 June 2013, <https://www.dailymaverick.co.za/article/2013-06-14-peacekeepers-behaving-badly-why-south-african-ill-discipline-in-drc-is-a-un-problem/#.WrDp9ehubIU>; "SA soldiers worst sex offenders on UN missions," *Mail & Guardian*, 24 June 2015, <https://mg.co.za/article/2015-06-24-sa-soldiers-worst-sex-offenders-on-un-missions>.

guilty of over 1,000 instances of misconduct and 230 criminal offenses for drunkenness, absence without leave, disobeying lawful commands, assault, theft, murder and rape.⁷¹

Karim and Beardsley, for example, note that South Africa is identified as having the highest SEA allegations of all the TCCs and their military personnel have also suffered allegations of rape outside of UN missions.⁷²

There is a lack of literature specifically regarding analysis of South Africa's poorly disciplined peacekeepers. Much of the academic focus is on the foreign policy objectives that South Africa can achieve through its participation in peacekeeping initiatives on the African continent.⁷³ This study intends to address this paucity in the literature. Local media publications reported on allegations of misconduct by South African peacekeeping personnel across all missions in which they have participated for the past 19 years:

“When the UN report was released in 2015, South Africa was found to be the worst offender of all UN peacekeeping nations. The report focused on offences in the [DRC], Sudan, South Sudan, Liberia and Haiti. South Africa had more than 2 000 troops stationed in the DRC, Sudan and South Sudan, according to media reports at the time.”⁷⁴

Thus, although there exists a significant body of literature on the subject of peacekeeper sexual misconduct, most of the literature consulted is not informed by a theoretical framework other than examining gender theory-related dynamics. Even less of the literature has a direct focus on TCC's and the specific role thereof in preventing personnel from engaging in sexually predatory behaviour against civilians. This is especially concerning the TCC who is primarily responsible for the conduct of those whom they deploy to form part of UN missions. As such, this study aims address this gap in the literature by applying a constructivist theoretical lens to explore the deficiencies in the preventative methods undertaken by South Africa, the largest African TCC in the DRC.

⁷¹ Theo Neethling, “THE SANDF AS AN INSTRUMENT FOR PEACEKEEPING IN AFRICA: A CRITICAL ANALYSIS OF THREE MAIN CHALLENGES,” *Journal for Contemporary History* 36 (2011): 147.

⁷² Karim and Beardsley, 111-112.

⁷³ Chris Alden and Maxi Schoeman, “South Africa in the company of giants: the search for leadership in a transforming global order,” *International Affairs* 89(2013):114.

⁷⁴ Ra'eesa Pather, “SA deploys more women UN peacekeepers to curb sexual abuse,” *Mail & Guardian*, 19 September 2017, <https://mg.co.za/article/2017-09-19-sa-deploys-more-women-peacekeepers-in-bid-to-curb-sexual-abuse>.

1.4. Evidence and Methods

A theoretical case study approach is utilised in this study and is underpinned by Constructivism, especially in relation to norm creation and internalisation.

This study draws on academic material in the form of academic journals books, non-governmental organisation reports, UN documents and policies, South African governmental documents, as well as local and international news outlets.⁷⁵ To a lesser extent, the study also makes use of available data on reported allegations of misconduct housed in the UN Conduct website database,⁷⁶ which was limited to SEA offences committed by South African peace keepers and UN police personnel – it also includes data on where the affiliation of the perpetrator was not specified.⁷⁷ Where relevant and available, case file data from medical clinics, hospitals and legal offices, interview-sourced data from investigations and population based NGO surveys was referred to.

The UN's Conduct in Field Missions website provides a detailed online database on allegations against UN personnel but is limited in that it does not provide information regarding allegations prior to 2007 or against civilian personnel deployed as part of peacekeeping missions.⁷⁸ Because of the data limitations, allegations for MONUC will be limited and more focus will be given to MONUSCO, which took over from MONUC in 2010, after receiving its mandate through SC/RES/1925.⁷⁹

The SEA dataset only includes data on reported allegations, which the UN has defined as “uncorroborated information pointing to the possible occurrence of misconduct.”⁸⁰ This will further be narrowed down to allegations against military, police and unspecified personnel in MONUC and MONUSCO. Although the paper will focus on troop contributing countries in UN missions and their respective preventative measures, it is important to note that UN records on SEA allegations including the nationality of the alleged perpetrator only date back to 2015. However, it was only in 2015 that the nationality of alleged perpetrators was

⁷⁵ Azad Essa, “Why do some UN peacekeepers rape?” *Aljazeera*, 4 August 2017, <http://www.aljazeera.com/indepth/features/2017/07/peacekeepers-rape-170730075455216.html>.

⁷⁶ “Other misconduct,” United Nations Conduct, accessed 12 February 2018, <https://conduct.unmissions.org/other-misconduct-data>.

⁷⁷ *Ibid.*

⁷⁸ “Sexual Exploitation and Abuse,” United Nations Conduct.

⁷⁹ “MONUSCO Fact Sheet,” United Nations Peacekeeping.

⁸⁰ “Sexual Exploitation and Abuse,” United Nations Conduct.

disclosed. Non-disclosure of nationality in UN data is an action that has precedent in the 2004 OIOS investigations in Bunia, DRC,⁸¹ for fear of embarrassing or isolating states on whom they are dependent on military, police and equipment contributions.

Other sources of data that provide context on the extent of civilian predation in the DRC includes NGO produced population based-surveys, which are not immune from their inherent biases of being dependent on crises for their existence which may result in potential over exaggeration or over reporting. There is also case file data from medical clinics, hospitals and legal offices, however, this is less readily accessible due to confidentiality requirements.

Generally, there are limitations in any data concerning sexual abuse stating that it may be over or underreported. Sexual violence in the Congo, and elsewhere, is generally underreported,⁸² therefore, it follows that those incidents committed by peacekeepers may also be especially underreported due to their positions of authority. The reliability of data may also be compromised by double-count related over-reporting – where the same individuals are counted multiple times by various researchers or agencies.⁸³ Other limitations that skews the data include a disproportionate focus on female victims and an inherent selection bias based on where non-UN sourced data on rapes are sourced.⁸⁴

Notwithstanding questions surrounding the reliability of the available data on sexual violence in the DRC, this limited data is still important in an evaluation of the preventative measures at state and institutional level.

It is important to note that there is a number of limitations in the available information for this research. The most significant limitations relate to the data itself, which is of limited availability as it relies on self-reporting which may bring into question the reliability of the information provided. Even in the instance of allegations that have been reported, it is difficult for many of these allegations to be corroborated either due to the inability of authorities to track down the victim or perpetrator, or the absence of witnesses due to the

⁸¹ Marco Odello, “Tackling Criminal Acts in Peacekeeping Operations: The Accountability of Peacekeepers,” *Journal of Conflict and Security Law* 15(2010): 350-351.

⁸² Pratt, et al., 11.

⁸³ Ibid.

⁸⁴ Susan Bartels, Jocelyn Kelly, Jennifer Scott, Jennifer Leaning, Denis Mukwege, Nina Joyce and Michael van Rooyen, “Militarized Sexual Violence in South Kivu, Democratic Republic of Congo,” *Journal of Interpersonal Violence* 28(2012): 351-352.

nature of sexual crimes.⁸⁵ However, these concerns are addressed by case file data and reports from medical personnel, who can confirm whether the injuries sustained by the victim are consistent with their reported assault.

Reports of sexual assault and exploitation may also be over and under-reported given the personal circumstances of the victim. Although a significant amount of the data used comes from the UN Conduct database, the database only contains incidents of misconduct that have been reported. This may skew the data as there are numerous reasons why the rate of reporting may change at any given period; for instance, an increased interest in the subject matter may be confused for an increase in incidents.⁸⁶ Further, it is possible that victims could have fabricated incidents of assault in order to gain access to limited medical resources. Information sourced from activists, NGOs and directly from victims might be inaccurate as they might overemphasise or exaggerate in order to fuel certain perceptions that result in increased aid or external intervention.⁸⁷

While much of the data does not report specific information on the victims, there is likely to be a gendered bias in the data, which will likely exclude male victims. More information is readily available on women and children who have been subject to abuse. Additionally, it is difficult to attribute changes in the data to policy interventions, as there may be multiple reasons why incidents of misconduct may increase or decrease.

This research will primarily focus on South African peacekeeping personnel as alleged perpetrators of SEA crimes. However, the UN only began keeping data on the nationality of perpetrators in 2015, which most peacekeeping missions predate. Additionally, it is difficult to assess the reliability of these claims against certain nationalities.

1.5. Chapter Outline

In order to address the proposed research question in a logical manner, the following three chapters discuss the theoretical framework, context and case study. Conclusions about why certain interventions have failed to yield the desired results will then be generated from the evidence presented in the literature and documents consulted.

⁸⁵ United Nations Secretary General, “Investigation into sexual exploitation of refugees by aid workers in West Africa,” United Nations General Assembly document A/57/465, 11 October 2002, 10.

⁸⁶ Kay Cohen, 466-467.

⁸⁷ Ibid.

Chapter 2 explores Constructivism as the analytical framework of this research, with a focus on the creation and internalisation of international norms. Chapter 3 discusses the context surrounding sexual misconduct within UN peacekeeping missions and the policies drawn up by the UN to address instances of misconduct.

Chapter 4 will examine South African peacekeeping personnel in MONUC and MONUSCO, providing a background to South Africa's involvement and its SEA policy framework. Thereafter, Chapter 5 explores, in greater depth, the preventative and punitive practices employed by South African authorities to address sexual misconduct in MONUC and MONUSCO. Finally, Chapter 6 draws conclusions and presents recommendations.

2. Theoretical framework: Norms in Constructivism

2.1. Introduction

This study is underpinned by a Constructivist theoretical framework. One of the key principles of Constructivist thinking is that actors create meaning for and with others in the context of particular social and historical contexts and systems. The actions of actors in the international system, and their relations with each other, are informed by practices and norms, and it is these norms that give actions and behaviour meaning.⁸⁸ In other words, meaning is determined by interactions that create the social structures through which identities and interests, informed by practices and norms, are defined.⁸⁹

The exploration of the main political dynamics that occur when dealing with sexual misconduct perpetrated by UN-affiliated personnel during UN peace missions will thus be approached from a constructivist position. In order to analyse the development, implementation and internalisation of norms towards behaviour change, the Norm Life Cycle is utilised as the analytical framework of this research.⁹⁰

This chapter aims to unpack and delve more deeply into the Norm Life Cycle, with a specific focus on norm internalisation.

All actors within the international system have identities that they acquire through the collective meaning derived from participation in structures, which organise actions undertaken.⁹¹ Identities demonstrate the ideals and preferences of a state and states reproduce their identities through social practice, although they can control how this identity is perceived by other states.⁹² Therefore, identities are important because they are *not* viewed as fixed; a state's identity can evolve as its interests do and an actor can have many identities simultaneously depending on their context.⁹³ In some instances, states may embrace certain

⁸⁸ Ted Hopf, "The Promise of Constructivism in International Relations Theory," *International Security* 23(1998): 173.

⁸⁹ Alexander Wendt, "Anarchy is what states make of it: the social construction of power politics," *International Organization* 46(1992): 406; Edward Newman, "Human Security and Constructivism," *International Studies Perspectives* 2(2001): 247.

⁹⁰ Finnemore and Sikkink.

⁹¹ Wendt, 397.

⁹² Hopf, 175.

⁹³ Hopf, 176; Wendt, 398.

norms and shape their identities around them as a means of international legitimation following domestic political changes.⁹⁴

Constructivists also consider the importance of the roles of institutions, which are stable sets of interests and identities, as products of the perceptions and socialisation of actors.⁹⁵ Socialisation results in social practice that produces and reproduces identities and interests that shape state behaviour that results in predictability that leads to order.⁹⁶ Based on its focus on ideas and norms, Constructivism provides an analytical framework of state behaviour in the context of the international norms that underpin or determine appropriate behaviour in the international system. Additionally, Constructivism entails the inclusion of domestic politics and culture as they are significant contributors to a state's identity and subsequently behaviour.⁹⁷ Constructivism is additionally a relevant analytical lens for the topic of peace missions; peace missions can serve as instruments of norm diffusion or maintenance and promotion of existing norms.⁹⁸

2.2. The Norm Life Cycle

Finnemore and Sikkink proposed what they named the Norm Life Cycle, a three-stage process that demonstrates how norms emerge and evolve until they have reached a status within the international community where their existence is perceived to be natural.⁹⁹ As this cycle will form an integral part of the analytical framework for this paper, it is worth discussion.

⁹⁴ Acharya, 247.

⁹⁵ Wendt, 399.

⁹⁶ Hopf, 178.

⁹⁷ *Ibid.*, 194-195.

⁹⁸ Björkdahl, 214.

⁹⁹ Finnemore and Sikkink, 895.

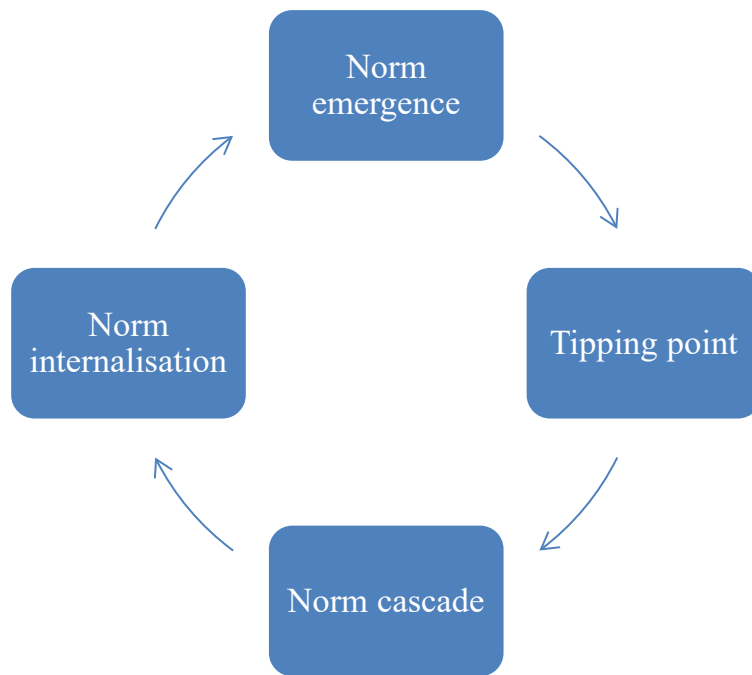


Figure 3: The Norm Life Cycle (Finnemore and Sikkink, 1998).

2.2.1. Norm Emergence

The first stage of the cycle is Norm Emergence.¹⁰⁰ This begins with actors, who are classified as norm entrepreneurs that build norms based on views about what behaviour is considered acceptable or ideal in their community.¹⁰¹ These actors are vital during this stage; through discourse creation and framing, they are able to draw attention to an issue. The framing and language used to develop new norms becomes critical due to the fact that norms do not emerge in isolation but rather must compete with existing, and sometimes contrary, norms, in order to overhaul them and establish new patterns of accepted or appropriate behaviour.¹⁰² At this stage, norm entrepreneurs are limited in the tools at their disposal and rely strongly on persuasion motivated by “empathy, altruism, and ideational commitment” as well as their own personal or communal interests to garner support for their developing norm.¹⁰³

Because we are discussing international norms, norms must move from beyond the domestic arena of the norm entrepreneur to the international arena. This is done most effectively through organisational platforms such as non-governmental or inter-governmental

¹⁰⁰ Ibid.

¹⁰¹ Ibid., 896.

¹⁰² Finnemore and Sikkink, 897; Björkdahl, 215; Acharya, 243.

¹⁰³ Ibid., 898.

international organisations.¹⁰⁴ While some organisations have been established explicitly for promoting a specific norm, for example, Greenpeace and its promotion of environmental conservation, many norm entrepreneurs utilise standing international organisations that exist to fulfil a multitude of purposes, such as the UN.¹⁰⁵ It is important to remain conscious of the fact that the structures of organisations like the UN have an inherent influence on the kinds of norms that it endorses due to its Charter, such as sovereignty and human rights protection.¹⁰⁶ Organisations are able to promote or discredit the proliferation of certain norms due to the expertise of its professionals and the information generation capacity of its bureaucracy; experts with access to government officials are able to utilise information at their disposal to influence the formulation of government policy, which may promote an emerging norm.¹⁰⁷ This is an important factor, as norm entrepreneurs need the support of states to endorse, promote, and socialise their norms.¹⁰⁸ Thus, IGOs are more effective than coalitions of NGOs, which rely on persuasion only, due to the advantages that IGOs have over smaller, developing states.¹⁰⁹

Often, for an emergent norm to progress to the Norm Cascade stage of the cycle, the norm needs to acquire a critical mass of support from states, which can be achieved if the norm becomes institutionalised. Institutionalisation often takes place through the rules of multilateral organisations, bilateral foreign policies and the ascension of norms to the status of international law.¹¹⁰ Although institutionalisation is not a precondition for Norm Cascade, it strengthens the likelihood of Norm Cascade by specifying what constitutes appropriate behaviour or violations thereof; however, institutionalisation can also occur as a consequence of a Norm Cascade.¹¹¹

When a norm has been adopted by a critical mass of states, it reaches a threshold called the tipping point. According to Finnemore and Sikkink, the tipping point is reached when the norm is adopted by one third of the states in the system, although which states adopt the norm

¹⁰⁴ Ibid., 899.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.900.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

is also of influential.¹¹² States whose buy in is necessary for adoption of a norm include states “without which the achievement of the substantive norm goal is compromised” and states that have “a certain moral stature.”¹¹³ The concept of critical mass is often present in international treaty law where treaties require a specific number or proportion of state signatories to ratify the treaty before it enters into force.¹¹⁴ However, this is not to say that ascension to the status of international law is all encompassing, due to the consent basis of treaty-based law and the lack of a supranational body able to enforce such laws.

2.2.2. Norm Cascade

After a norm has reached the tipping point, the norm enters the second stage of the cycle, Norm Cascade, where the norm is broadly accepted by states or “bandwagoning” occurs.¹¹⁵ At this stage, domestic pressure for norm adoption is no longer necessary and international socialisation becomes the driving force behind norm adoption.¹¹⁶ Within international socialisation, states encourage others to adopt norms through diplomatic support or punishment; international organisations and norm entrepreneur networks also facilitate the process by pressuring actors to join and ratify treaties.¹¹⁷ For socialisation to occur, states must be sufficiently motivated to adopt a norm, which can be linked to the state’s identity, for example, as a liberal state, through legitimisation, conformity and esteem.¹¹⁸

International organisations are key sources of legitimisation by approving or disapproving of the behaviour of states in the international arena, which can ensure compliance with international norms and repercussions for noncompliance.¹¹⁹ International legitimisation of norms also promotes domestic legitimisation of norms, which in turn promotes compliance with norms by citizens.¹²⁰ States conform to international norms to show that they belong in the global community, especially if other states are conforming to the norm and esteem is related to both conformity and legitimacy, in that states wish to be well perceived by their

¹¹² Ibid., 901.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Mona Lena Krook and Jacqui True, “Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality,” *European Journal of International Relations* 18(2010): 107.

¹¹⁶ Finnemore and Sikkink, 902.

¹¹⁷ Ibid.

¹¹⁸ Ibid., 903.

¹¹⁹ Fabrizio Gilardi, “Transnational diffusion: Norms, ideas and policies,” in *Handbook of International Relations*, eds. Thomas Risse and Beth Simmons (Thousand Oaks: Sage Publications, 2012), 23.

¹²⁰ Finnemore and Sikkink, 903.

peers, but also relates to how states perceive themselves.¹²¹ However, new norms are more likely to gain acceptance and legitimacy when they complement and “fit coherently” with existing norms.¹²²

2.2.3. Norm Internalisation

The final stage of the Norm Life Cycle is Norm Internalisation, where norms are generally widely accepted and not considered as topics up for debate, and consequently results in an almost unconscious compliance.¹²³ Internalisation, which is a continuation of the Norm Cascade and a product of socialisation where a norm is so deeply entrenched that it is considered the only appropriate form of behaviour.¹²⁴ This stage is also referred to as Norm Diffusion, which occurs over both stages of Norm Cascade and Norm Internalisation;¹²⁵ because of this, the two terms will be used interchangeable in this study. This also highlights the overlapping nature of the Norm Cascade and Norm Internalisation stages, especially in the absence of objective measurement criteria.

Norm Internalisation goes beyond a state adhering to international law due to ‘peer pressure’ from other states or state image in the international arena, but that norms become consolidated and universal because compliance has become habit through repeated behaviour.¹²⁶ In other words, one can determine when a norm has been internalised when it is reproduced in the identity, interests and behaviour of a state.¹²⁷ Thus, endorsing and adopting a norm requires behavioural change in accordance with the norm.¹²⁸ For example, all states are bound by UN Charter to promote and protect human rights; this that been institutionalised in the UN Charter as well as other sources of international law. Yet, there are states that perpetrate human rights violations against its population. This is because violations of a norm do not necessarily make it invalid, nor do they refute it.¹²⁹ Instead, this may reflect that the

¹²¹ Finnemore and Sikkink, 903; Risse and Sikkink, 8.

¹²² Noha Shawki, “Responsibility to Protect: the Evolution of an International Norm,” *Global Responsibility to Protect* 3(2011): 178.

¹²³ Finnemore and Sikkink, 895, 904.

¹²⁴ Risse and Sikkink, 5; Gilardi, 23.

¹²⁵ Rodger A. Payne, “Persuasion, Frames and Norm Construction,” *European Journal of International Relations* 7(2001): 42.

¹²⁶ Finnemore and Sikkink, 905.

¹²⁷ Risse and Sikkink, 12.

¹²⁸ *Ibid.*, 7.

¹²⁹ John Gerard Ruggie, *Constructing the World Polity: Essays on international institutionalisation* (New York: Routledge, 1998) 97.

state has not been socialised to reproduce the appropriate behaviour and as such, the norm has not been internalised.

Norm Internalisation underlines the importance that actors accept the norm as appropriate for themselves and behave accordingly. States acquire an identity – a set of norms – for themselves (a self-image) and to project images of themselves.¹³⁰ Socialisation is necessary for internalisation so that external factors such as legitimacy, conformity and self-esteem are no longer required to ensure compliance with norms.¹³¹ Although scholars such as Krook and True argue that the model put forth by Finnemore and Sikkink lacks a coherent explanation for why norms may spread but fail to be universally realised or have differing local practices.¹³² To address this, Krook and True argue that by understanding the type of norm, it is possible to explain why certain norms are adopted more or better than others. Constitutive norms that can define a state's identity leave little room for contestation, which negatively affects their ability to diffuse.¹³³ Regulative norms, on the other hand, which prescribe behaviour standards without defining a state's identity, are more easily diffused due to their room for adaptation.¹³⁴

2.2.4. The Political Dynamics of Norm Internalisation and Peace Missions

In their conduct, peace mission personnel are supposed to reflect behaviour consistent with the normative frameworks that underpin their missions. This is of additional importance because international organisations (IOs) play a key role in spreading norms;¹³⁵ therefore, UN peace missions can serve as an avenue of norm diffusion.¹³⁶ One of these norms concerns the impermissibility of sexual exploitation or abuse of women. The protection of women from sexual violence may be a relatively new norm on its own; but it also fits into a cluster of more established norms such as the protection of civilians and human security. It was only in 1998 with introduction of the Rome Statute that the issue gained widespread international

¹³⁰ Jepperson et al., 59.

¹³¹ Risse and Sikkink, 11.

¹³² Krook and True, 123.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Susan Park, "Theorizing Norm Diffusion Within International Organizations [Uncorrected Proof]," *International Politics* 43(2006): 2.

¹³⁶ Björkdahl, 215.

importance, following decades of advocacy from human rights and women's rights organisations.¹³⁷

Given the role of the UN as a key organisational platform that spreads norms to its member states, as well as its expressed commitments to the norms that state that sexual abuse or exploitation of women is not appropriate, these commitments should be reflected in its behaviour during its peace missions.

For instance, senior UN and government officials have generally accepted norms against transaction sex in conflict and post-conflict environments, yet the behaviour of peace mission personnel does not reflect the appropriate normative behaviour despite broad educational programmes; some personnel have even openly rejecting the UN's zero-tolerance policy.¹³⁸ This disconnection between norm acceptance within bureaucratic structures and personnel in the field, especially when concerning appropriate sexual conduct, is one of the elements that this study seeks to explain by looking at Norm Internalisation. However, Norm Internalisation must be considered within the unique political dynamic of peace missions. In peacekeeping missions, military and police contingents form the bulk of the personnel; these contingents are deployed by their states who maintain the responsibility of ensuring that their personnel behave in accordance to UN standards of conduct.

This may raise the question of why states would participate in these missions if they are bound by external standards. According to the literature, there are five general justifications for why states contribute to a peacekeeping operation: political, economic, security, institutional and normative.¹³⁹ These justifications are informed by several factors, including domestic or foreign policy considerations or resource constraints, and they are not mutually exclusive.

In their conduct, peacekeeping personnel are supposed to reflect behaviour consistent with the normative frameworks that underpin their missions. However, the acceptance of norms

¹³⁷ Sara E. Davies and Jacqui True, "Norm Entrepreneurship in Foreign Policy: William Hague and the Prevention of Sexual Violence in Conflict," *Foreign Policy Analysis* 13(2017): 702.

¹³⁸ Bernd Beber, Michael J. Gilligan, Jenny Guardado and Sabrina Karim, "Peacekeeping, Compliance with International Norms, and Transactional Sex in Monrovia, Liberia," *International Organization* 71(2016): 5; Defeis, 192.

¹³⁹ Alex J. Bellamy and Paul D. Williams, "Broadening the Base of United Nations Troop- and Police-Contributing Countries," *Providing for Peacekeeping No. 1* (New York: International Peace Institute, 2012), 3-6.

regarding peacekeeping has been inconsistent. For instance, senior UN and government officials have generally accepted norms against transactional sex in conflict and post-conflict environments, yet peacekeepers themselves have not accepted the norm despite broad educational programmes, with some openly rejecting it.¹⁴⁰

The extent of the occurrence of sexual exploitation and abuse (SEA) incidents in peacekeeping missions suggests that socialisation alone has failed to produce compliance with international norms around SEA crimes.¹⁴¹ When international norms have been appropriately socialised by states, this reflects in their behaviour. One way that this socialisation can be pursued is through states' ability to create and enforce rules regarding the conduct of their personnel in line with the international norms that they must comply with when they participate in UN peace missions.¹⁴² Thus, peacekeeper misconduct can reflect the inability of a state to enforce international norms through domestic socialisation by failing to produce behaviour consistent with the norm.

It is at this point that we must demonstrate how we will explore the political dynamics between the UN and its troop-contributing countries (TCCs) when it comes to Norm Internalisation in peace missions. Although there are no objective measurement criteria to determine Norm Internalisation, this study will use Gilardi's four mechanisms of norm diffusion (coercion, competition, learning and emulation),¹⁴³ which will explain the various ways in which Norm Internalisation can take place. It is important to note that while the body of Gilardi's work relates to policy diffusion at the state-level, his four categories of diffusion in this respect can be adapted to the process of norm internalisation where it discusses the dynamics between IOs and states. These categories will provide the analytical framework to evaluate the process of Norm Internalisation in subsequent chapters of this research.

2.2.4.1. Coercion

The first way in which a state can adopt and internalise a norm is through coercion. In this instance, international organisations like the UN as well as powerful states, can apply pressure on other states in order to adopt norms. Coercion often takes place through the

¹⁴⁰ Beber et al., 5; Defeis, 192.

¹⁴¹ Beber et al., 23.

¹⁴² Ibid., 24.

¹⁴³ Gilardi, 13.

mechanism of conditionality; conditions are set as preconditions for assistance in exchange for adopting certain norms.¹⁴⁴

Coercion is especially popular with international financial institutions (IFIs) like the International Monetary Fund (IMF) and World Bank, who attach certain conditions – which are often policy related and not normative, although the two are not mutually exclusive – as preconditions for financial assistance.¹⁴⁵ Regional IGOs like the European Union (EU) also have conditions attached to membership. For example, member states must align their domestic practices and political institutions with the values of the EU in order to become members.¹⁴⁶

However, conditionality as a method of coercion does not always yield the desired results. In the case of IFIs, some states that are dependent on their financial assistance do not implement the required reforms. Furthermore, while the EU makes use “reinforcement by reward” in order to coerce prospective members to adopt its liberal democratic norms and values, the cost of compliance in countries like Turkey or Serbia outweigh the prospective benefits of membership.¹⁴⁷

2.2.4.2. Competition

The second method of internalisation is competition, which refers to countries adopting or adapting certain behaviours as a response to, or in anticipation of, the behaviour of other states.¹⁴⁸ This category is largely rooted in notions of domestic economic practices and international economic interdependence. Although IOs do not play a significant role in this category, it is still worth noting that states can influence other states to adopt behaviour regarding protection of the environment of labour relations based on their commercial relations with other states that have higher levels of environmental or labour protections.¹⁴⁹

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid., 14.

¹⁴⁸ Ibid., 15.

¹⁴⁹ Ibid., 15-17.

2.2.4.3. Learning

States can also adopt new norms through a process of learning, where the experiences of other states is used to gauge the consequences of behavioural changes in line with a change in beliefs.¹⁵⁰ States typically learn from other states who have already adopted the beliefs and behaviours under their consideration, which can then be compared with their own experience, their experience of those in their region, and the experience of the entire world.¹⁵¹ This process of learning is understood to be a rational process where the gains of norm adoption and behavioural change are weighed against the experiences of states who already behave accordingly.

According to research conducted on this subject, member states of an IGO are more likely to adopt behaviours if there is evidence – or the perception – that other states who already subscribe to a given norm have derived benefits from it.¹⁵² However, learning is not always perfect. Decision-makers are restricted by their ideological positions and domestic political considerations.¹⁵³ Furthermore, learning is more likely to be used to advance the interests of decision-makers, instead of to abide by appropriate standards of behaviour.

2.2.4.4. Emulation

Emulation is the final process through which internalisation can occur. In emulation, behaviour and beliefs spread not due their inherent characteristics but because of the “normative and socially constructed properties” that they hold.¹⁵⁴

In our discussion of Norm Internalisation, emulation is perhaps the most important method of diffusion, especially due to the role that IOs can play herein. The actions of political actors are guided primarily by what is considered appropriate within that organisation; unlike in coercion, competition and learning where actions are driven by consequences and domestic

¹⁵⁰ Ibid., 17-18.

¹⁵¹ Ibid., 18.

¹⁵² Ibid., 19.

¹⁵³ Ibid., 21-22.

¹⁵⁴ Ibid., 22

gain.¹⁵⁵ Thus, the “logic of appropriateness” that drives the behaviour of organisations is also responsible for determining identities and roles.¹⁵⁶

These identities and roles can be determined through three socialisation processes, where socialisation refers to the “process of inducting actors into the norms and rules of a given community.”¹⁵⁷ First, by strategic calculations that can lead to long-term preference changes and second, through role-playing where roles are adopted in certain settings without full norm internalisation.¹⁵⁸ Strategic calculations can involve social and material incentives to produce sustained behavioural changes; however, strategic calculations must operate in conjunction with other socialisation mechanisms, without which it is relegated to a means of coercion or competition.¹⁵⁹

Role-playing as a means of socialisation sees actors “act in accordance with expectations – irrespective of whether they like the role or agree with it.”¹⁶⁰ It becomes a useful shortcut when cost-benefit calculations are not practical or possible, the organisational environment already has prescriptive roles that a state can simply adopt when they are in that setting.¹⁶¹ Because role-playing is easier in institutional settings than constantly calculating the strategic value of behaving in a certain way, it is possible for roles to evolve unconsciously into habits with a taken-for-granted status.¹⁶² When an actor moves from role-playing to believing that it is the ‘right thing to do’, the taken-for-granted status that characterises the far end of Norm Internalisation is achieved.¹⁶³

The third socialisation process, which arguably leads to full norm internalisation, is normative suasion. This is where actors come to change their beliefs and understanding of what is appropriate through persuasion and interactions with others.¹⁶⁴ Through normative suasion, a state fully internalises a norm or standard of appropriateness through a belief that it

¹⁵⁵ Ibid.

¹⁵⁶ Ibid., 22.

¹⁵⁷ Jeffrey T. Checkel, “International Institutions and Socialisation in Europe: Introduction and Framework,” *International Organization* 59(2005): 804.

¹⁵⁸ Gilardi, 22.

¹⁵⁹ Checkel, 808-809.

¹⁶⁰ Ibid., 804.

¹⁶¹ Ibid., 810.

¹⁶² Ibid., 811.

¹⁶³ Ibid., 804.

¹⁶⁴ Gilardi, 22; Checkel, 812.

is the right thing to do. Talking and arguments become the primary tools of persuasion, especially in international organisations.¹⁶⁵

These three socialisation processes should not be considered as a linear process as internalisation can occur because of all three processes. Additionally, internationalisation does not occur in a vacuum and IOs are more than organisational platforms but also act as promoters and sites of socialisation in public arenas.¹⁶⁶ Therefore, it is through this process of socialisation – a component of emulation – that norms can become internalised. Other processes like learning may play a role initially, but become less important the more internalised the norm becomes.¹⁶⁷ While emulation as a means towards Norm Internalisation and the political dynamics that occur within emulation are key to the analysis of this research, it is conceded that there exists no methodological consensus on how to measure emulation in general terms and can only be considered on a case-by-case basis.¹⁶⁸

2.3. Summary

Generally, there are four broad ways in which internalisation of norms and behaviour change can occur, these categories are not fixed, and states may adopt multiple of these methods simultaneously depending on the nature of the norms and beliefs under consideration. A common underlying thread in these processes is that whether through coercion, learning or competition, states usually adopt norms and behave accordingly when there is something for them to gain.

It is only through emulation, where actions are guided by appropriateness standards set by IOs that more than self-interest motivate states, although this is not to say that self-interest and normative considerations cannot coexist – as is demonstrated by the five justifications for peace mission contribution by Bellamy and Williams.¹⁶⁹ While emulation is the method through which the internalisation of international norms occurs, other processes such as learning or coercion may still occur, especially within the first two stages of the Norm Life Cycle.

¹⁶⁵ Checkel, 812.

¹⁶⁶ *Ibid.*, 806-807.

¹⁶⁷ Gilardi, 25.

¹⁶⁸ *Ibid.*, 29.

¹⁶⁹ Bellamy and Williams, 3-6.

Regarding the topic of this research specifically, the process of emulation shapes the political dynamics of the relationship between UN and TCCs where the UN determines what is considered appropriate and TCCs must comply. When the appropriate behaviour is not displayed, as has been the case, we can look at the underlying socialisation processes of emulation to determine why.

Although not all of the abovementioned processes are relevant to this research as the focus henceforth will be on emulation, it is still important to understand the mechanisms through which norms can be internalised if any meaningful analysis is to be conducted.

3. The UN, MONUC, MONUSCO and sexual misconduct

3.1. Introduction

Across these missions, peace personnel have allegedly participated in soliciting prostitutes, using child prostitutes, sex trafficking, having sex with children, and fathering children with local women and then abandoning them.¹⁷⁰ The occurrences of transactional and exploitative sexual relationships as well as sexual abuse, takes place in the unique context of peace missions by personnel who enjoy immunity and privileges in the undertaking of actions in their official capacity.¹⁷¹ Peace missions are increasingly abused by their personnel, who create new demands for human trafficking and sex work. The UN and its agencies addressed these atrocities through policies and guidelines.¹⁷² Despite these efforts, the occurrences of SEA across peace missions not only continue to occur but vary greatly across the different missions; this may suggest that SEA is not an “inevitable by-product of multinational peacekeeping,”¹⁷³ but is instead influenced by mission-specific factors.

Initial assumptions by journalists, policymakers and academics were that women and children willingly engaged in sexual activities with peacekeeping and humanitarian personnel in exchange for food, money or shelter. However, this largely ignored incidents where women were coerced by peace mission personnel into performing sex acts, as was highlighted in investigations and reports into the conduct from the early 2000s.¹⁷⁴ Continued revelations of the exploitative sexual practices of peace mission personnel prompted a UN response that culminated in, what is now known as, the zero-tolerance policy.

This chapter will provide an overview of sexual misconduct by peace personnel and the major documents, frameworks and reports that comprise the UN’s zero-tolerance policy. The chapter will conclude with how the UN has implemented recommendations and provisions generally and within MONUC and MONUSCO.

¹⁷⁰ Ndulo, 129.

¹⁷¹ Murphy, 533.

¹⁷² Vanessa Kent, “Peacekeepers as Perpetrators of Abuse,” *African Security Studies* 14(2005): 87.

¹⁷³ Stephen Moncrief, “Military socialization, disciplinary culture, and sexual violence in UN peacekeeping missions,” *Journal of Peace Research* 54(2017): 716.

¹⁷⁴ Kent, “Peacekeepers as Perpetrators of Abuse,” 87.

3.2. MONUC and MONUSCO: An overview

The UN and NGO personnel have reported the commission of SEA incidents in peacekeeping missions since the early 1990s. This study will focus on incidents occurring within MONUC and MONUSCO between 1999 and 2018, especially given the crucial role played by the DRC in shaping the UN's zero-tolerance policy.

The DRC has a very complex history of conflict. As early as the 1960s, it played host to the United Nations Mission in the Congo (ONUC). These conflicts escalated following the country's independence from Belgium. However, the specific complexities of the DRC's history of conflict is beyond the scope of this paper. That being said, the 1990s are a significant period in this history due to the involvement of many regional actors in the conflict that necessitated UN intervention in an attempt to sustain the fragile peace that existed.

In 1999, MONUC was established as a peacekeeping mission with the adoption of UNSC resolution S/RES/1279 (1999) to monitor the Lusaka Ceasefire Agreement between the DRC, Angola, Namibia, Rwanda, Uganda and Zimbabwe, to disengage forces, and liaise between them, as well as facilitate the delivery of humanitarian aid.¹⁷⁵ It was initially deployed in line with Chapter VI of the UN Charter, which largely required observers, but was expanded in 2000 in line with Chapter VII, permitting the use of force under certain considerations, including the protection of civilians from violence.¹⁷⁶ Following the election of Joseph Kabila in 2006, MONUC remained in place with a more robust mandate, including capacity building and the resolution of newer conflicts in a number of the provinces of the DRC.¹⁷⁷ MONUC was thus a blend of a peacemaking, peacekeeping and peacebuilding mission, but will hereinafter be referred to as a peacekeeping mission for the sake of argument.

In 2004, the *Independent*, a British newspaper, reported allegations of widespread sexual misconduct by the UN's personnel in Bunia. In the *Independent's* article, half of the over 30 girls interviewed said that they engaged in sexual activities with peacekeepers out of

¹⁷⁵ "Background," United Nations Organization Stabilization Mission in the Democratic Republic of Congo, accessed 19 June 2018, <https://monusco.unmissions.org/en/background>; United Nations Security Council, "Resolution 1279 (1999)," United Nations Security Council resolution S/RES/1279 (2006), 30 November 1999, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1279\(1999\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1279(1999)).

¹⁷⁶ Siobhán Wills, *Protecting Civilians: The Obligations of Peacekeepers* (Oxford: Oxford University Press, 2009), 57.

¹⁷⁷ "Background," United Nations Organization Stabilization Mission in the Democratic Republic of Congo.

desperation in exchange for basic supplies in their internally displaced persons (IDP) camp.¹⁷⁸ Teenaged girls who had infants as a product of being raped in their villages by combatants prior to entering IDP camps were dependent on transactional sex with peacekeepers due to their social isolation for having children while being unwed;¹⁷⁹ these interactions were largely for money, food and jobs.¹⁸⁰ Additionally, girls with whom DPKO officials spoke noted that peacekeepers also engaged in “rape disguised as prostitution”, where peacekeepers would rape them and then provide them with food or money to make it look like the interaction was transactional.¹⁸¹ Peacekeepers used boys and young men in the camps as intermediaries to facilitate these sexual encounters in exchange for food.¹⁸²

Peacekeepers were able to take advantage of girls sexually and avoid punishment because of the girls’ unwillingness to cooperate with investigators, as many had previously suffered abuses at the hands of soldiers and were distrustful of authority figures.¹⁸³ Other factors that contributed to the pervasiveness of the abuse and exploitation of women and children are poverty and lack of economic opportunities; breakdowns in familial units from conflict; an absence of an effective judicial system; and, a local acceptance of violence against women and children. Additionally, there was a culture of impunity among peacekeepers themselves fuelled by perceptions of whistle-blower victimisation, a lack of recreational activities, poor knowledge of UN conduct standards and perceptions that no action was being or would be taken by authorities.¹⁸⁴

Against this background, an OIOS investigation was conducted into 72 SEA allegations in Bunia between May and September of 2004 after public outcry and condemnation.¹⁸⁵ However, in addition to the hesitance of victims to cooperate with authorities out of fear, many of the allegations were not specific, unsubstantiated or victims were not able to identify

¹⁷⁸ Kate Holt and Sarah Hughes, “Sex and death in the heart of Africa,” *Independent*, 25 May 2004, <https://www.independent.co.uk/news/world/africa/sex-and-death-in-the-heart-of-africa-564563.html>.

¹⁷⁹ Holt and Hughes; Shotton, 102.

¹⁸⁰ United Nations General Assembly, “Comprehensive review of the whole question of peacekeeping,” 8.

¹⁸¹ Shotton, 101-102; United Nations General Assembly, “Comprehensive review of the whole question of peacekeeping,” 8.

¹⁸² Murphy, 535.

¹⁸³ Holt and Hughes.

¹⁸⁴ United Nations General Assembly, “Comprehensive review of the whole question of peacekeeping,” 10.

¹⁸⁵ Shotton, 100; Ndulo, 142.

alleged perpetrators.¹⁸⁶ Despite that, the Secretary-General reported to the UNGA that the majority of the allegations – 45 percent of the total – involved sex with children.

On 28 May 2010, UNSC resolution S/RES/1925 was passed, which saw the creation of MONUSCO. This mission was to take over from MONUC. MONUSCO had a more comprehensive mission mandate than MONUC, permitting the use of “all necessary means” in order to achieve as its top priority “the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the [DRC Government] in its stabilization and peace consolidation efforts.”¹⁸⁷ Other priority areas of MONUSCO’s mandate include providing protection from “all forms of sexual and gender-based violence” and requesting that MONUSCO is in full compliance with the zero-tolerance policy.¹⁸⁸

The trend of overall SEA allegation rates have improved in MONUSCO when compared to MONUC despite the absence of new policy interventions after the introduction of MONUSCO.¹⁸⁹ For example, between 2007 and 2010, there was a total of 193 allegations of SEA against all categories of personnel, compared to a total of 149 allegations against MONUSCO personnel from 2011 to 2017.¹⁹⁰ However, there are several reasons that may explain the general decrease, including improved preventative measures, or decreased reporting because of intimidation or fear, as opposed to a decrease in actual allegations.

3.3. United Nations Sexual Exploitation and Abuse policies

The reporting of widespread sexual misconduct of MONUC personnel in the early 2000s, as well as sexual misconduct by peacekeeping and NGO personnel in West Africa around the same time, limited the ability of UN missions to achieve their mandates and simultaneously tarnished the UN’s reputation. This necessitated an institutional response that became the

¹⁸⁶ Sandra Katrin Miller, “Accountability for the Conduct of UN-Mandated Forces Under International Human Rights Law: A Case Study Concerning Sexual Abuse of the UN Mission in the Democratic Republic of Congo (MONUC),” in *Practice and Policies of Modern Peace Support Operations Under International Law*, ed. Roberta Arnold and Geert-Jan Alexander Kooops (Ardsey: Transnational Publishers, Inc, 2006), 267.

¹⁸⁷ “Mandate,” United Nations Organization Stabilization Mission in the Democratic Republic of Congo, accessed 20 July 2018, <https://monusco.unmissions.org/en/mandate>; United Nation Security Council, “Resolution 1925 (2010),” United Nations Security Council resolution S/RES/1925 (2010), 28 May 2010, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1925\(2010\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1925(2010)).

¹⁸⁸ United Nation Security Council, “Resolution 1925 (2010).”

¹⁸⁹ Kovatch, 158.

¹⁹⁰ “Sexual Exploitation and Abuse,” United Nations Conduct.

zero-tolerance policy. Key documents include the 2003 Secretary-General Bulletin ST/SGB/2003/13 and the 2005 Zeid Report. Rule 4 of the UN Ten Rules: Code of Personal Conduct of Blue Helmets, applicable to peacekeeping personnel or ‘blue helmets’, also prohibits “immoral acts of sexual, physical or psychological abuse or exploitation”.¹⁹¹ Thus, the ultimate goal of these UN policies is to ensure that all personnel in peacekeeping missions comply with an appropriate standard of behaviour that is consistent with the values of the UN by not committing acts of SEA.

The focus on this section will be from the 2003 issuing of Bulletin ST/SGB/2003/13 onwards, with recognition of previous actions undertaken by the UN through reports and resolutions that in part addressed the topic of sexual exploitation. However, the Bulletin represents the first time a document was drafted that was explicitly concerned with combatting SEA, which is why it has been selected as the starting point for the contemporary zero tolerance policy.

3.3.1. Special Measures for Protection from Sexual Exploitation and Sexual Abuse

Section 3 of Bulletin ST/SGB/2003/13 clearly states, “[sexual] exploitation and sexual abuse violate universally recognised international legal norms and standards and have always been unacceptable behaviour and prohibited conduct”.¹⁹² The Bulletin also specifies six obligations of UN staff that outline activities, including the prohibition of sexual acts with children, transactional sexual relationships, and relationships with aid beneficiaries as well as the obligation to report suspected sexual abuse or exploitation and maintain an environment that prevents the occurrences of such acts.¹⁹³ Section 3.2(a) of the Bulletin also notes that SEA activities constitute “serious misconduct” that warrant disciplinary measures.¹⁹⁴

The Bulletin specifies that Heads of UN Missions are responsible for ensuring that their environment is conducive to preventing SEA and they must notify their staff of the provisions of the bulletin as well as take the appropriate actions in cases where these provisions have

¹⁹¹ “TEN RULES: CODE OF PERSONAL CONDUCT FOR BLUE HELMETS,” United Nations, accessed 25 June 2018, http://www.un.org/en/peacekeeping/documents/ten_in.pdf.

¹⁹² United Nations Secretariat, “Special measures for protection from sexual exploitation and sexual abuse,” 2.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

been violated.¹⁹⁵ The Mission Head is responsible for appointing an official to receive complaints and informing the local population and UN personnel of how to contact this person.¹⁹⁶ The Mission is also required to report any investigations and actions taken as a result thereof to the Department of Management; where sufficient evidence supports SEA allegations, cases may also be referred to national prosecution authorities after consultation with the UN's Office of Legal Affairs.¹⁹⁷ Cooperative arrangements with entities that are not within the UN system, such as NGOs, are also bound by these measures and failure to comply with the provisions or appropriately investigate allegations is grounds for termination of the arrangement.¹⁹⁸

This Bulletin demonstrates that there was a process put in place in order to address instances of SEA in peacekeeping missions, despite the lack of clarity surrounding investigative processes and the range of punishments at their disposal. The Bulletin is also vague regarding what specific actions can realistically be implemented to maintain an environment that prevents abuses, nor does it address the roles of TCCs or make reference to the MOU's that underpin the relationship between the UN and TCCs. The absence of references to national contingents is because the Bulletin does not apply to all categories of personnel; it is applicable only to UN staff who are under the administrative authority of the Secretary-General.¹⁹⁹ It is therefore not surprising that in 2004, a year after the Bulletin was published, there were more revelations of widespread SEA allegations by peacekeepers in the DRC.

3.3.2. Comprehensive Review of the Whole Question of Peacekeeping Operations in all their Aspects

The investigation conducted by Prince Zeid in 2004 and its subsequent recommendations was in direct response to the failure of Bulletin ST/SGB/2003/13 to address the problem of SEA in peacekeeping missions effectively. To contrast, Bulletin ST/SGB/2003/13 was three pages long in its entirety while Prince Zeid's more comprehensive review and strategy was 41 pages in length. The Zeid Report was an important step towards addressing the issue of SEA

¹⁹⁵ Ibid., 3.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Murphy, 533; Machiko Kanetake, "Whose Zero Tolerance Counts? Reassessing a Zero Tolerance Policy against Sexual Exploitation and Abuse by UN Peacekeepers," *International Peacekeeping* 17(2010): 203.

in peacekeeping because it acknowledged the scope of the problem, the failings of previous frameworks as well as the need for a “radical change” in the way that the UN addresses SEA in peacekeeping operations due to the inadequacy of existing strategies.²⁰⁰

In order to prevent SEA, there has to be an understanding of what some of its underlying causes are, which Prince Zeid and his team attempted to identify in the course of their investigation. According to the Zeid Report, one of the underlying causes stems from an inability of peacekeepers to fully recognise the extent to which the societies in which they operate are “traumatised” and “vulnerable”.²⁰¹

The report identifies a number of key areas that must be addressed in order to achieve a more effective policy on preventing and addressing sexual misconduct by peacekeeping personnel in general. The first is the issue of different standards of conduct which apply to different classes of personnel (civilian, military, police, contractors and volunteers), which the Zeid Report terms as a “serious shortcoming” of Bulletin ST/SGB/2003/13.²⁰² While most categories of personnel are bound by UN standards in one way or another, members of national contingents, which comprise all military personnel, were only bound by rules that were agreed to by their TCC.²⁰³ The Zeid Report recommended that the standards of the Bulletin be made applicable to all categories of personnel and the provisions should be issued in a convenient form in the languages of contingents.²⁰⁴

The Zeid Report also identified issues regarding the allegation investigative processes, most notably that evidence collected in preliminary investigations was often insufficient for use under their national law or for courts martial. In addition, TCCs seldom received complete documentation following investigations due to the “policy of not releasing documents that might be used by third parties to make claims against the [UN].”²⁰⁵ The actual investigative process was also seen as repetitive. Recommendations to this effect included a more streamlined investigative process, undertaken by professionals with access to modern

²⁰⁰ United Nations General Assembly, “Comprehensive review of the whole question of peacekeeping,” 9; Kent, “Peacekeepers as Perpetrators of Abuse,” 86.

²⁰¹ United Nations General Assembly, “Comprehensive review of the whole question of peacekeeping,” 7.

²⁰² *Ibid.*, 10-11.

²⁰³ *Ibid.*, 12.

²⁰⁴ *Ibid.*, 14.

²⁰⁵ *Ibid.*, 14.

forensic methods where the cases are not straightforward, and the participation of a TCC representative to ensure admissibility of evidence in national legal proceedings.²⁰⁶

Better measures of organisational accountability were also recommended, including increasing awareness raising campaigns to ensure that all personnel know that acts of SEA as outlined in the Bulletin are prohibited and extensive pre- and post-deployment training. The Zeid Report also recommended the establishment of communal outreach programmes to ensure that local populations are aware of the zero-tolerance policy and the reporting mechanisms available to them as well the deployment of more women in peacekeeping missions. The DPKO was recommended not to only track allegations but also the responses to those allegations in order to prevent perpetrators from being re-deployed in future, as well as the establishment of a dedicated misconduct mechanism within the DPKO.²⁰⁷

The Zeid Report identified that the lack of suitable recreational activities for personnel could result in them participating in prohibited activities out of boredom. Thus, the provision of paid rest, family visits, counsellors, and sports, internet and phone access could increase staff welfare and reduce the occurrence of misconduct born from personnel having little to do in their idle time.²⁰⁸

Noting that the UN has a limited ability to discipline all categories of peacekeeping personnel, the Zeid Report recommended that those who are found to have committed acts of SEA have their contracts terminated and be fined or have their payments withheld, with the proceeds going to a Victims' Trust Fund. The purpose of the fund is to assist victims, such as first-aid medical treatment, follow-up support from relief and aid agencies, as well as providing the victims with feedback on the outcome of investigations and the establishment of a victims' trust fund.²⁰⁹

The Zeid Report also recommended that the MOUs be amended to require national contingents comply with local laws, despite their immunity as per the SOFA with the host nation, and for TCCs to forward cases to their national prosecuting authorities where there is

²⁰⁶ Ibid., 15-17.

²⁰⁷ Ibid., 17-19.

²⁰⁸ Kent, "Peacekeepers as Perpetrators of Abuse," 89-90.

²⁰⁹ Ibid., 90.

evidence to support misconduct that constitutes a crime.²¹⁰ The report also recommended that implementation of SEA preventative measures be included in performance evaluations of members of senior management, and that senior military staff and contingent commanders are assessed on their ability to uphold and implement preventative and combative policies.²¹¹

While the key documents that underpin the zero-tolerance policy detail a process for accountability in cases of SEA, all of these policies and recommendations are restricted by MOUs and SOFAs. The MOUs and SOFAs are legal provisions that make national contingents immune from prosecution in the host state and ascribe sole jurisdiction for criminal prosecution to TCCs.²¹² Thus, while the UN may repatriate peacekeeping personnel to their countries of origin, they have no ability to ensure that perpetrators are prosecuted,²¹³ even if TCCs are obligated to do so.

3.3.3. Amended Model Memorandum of Understanding

In 2007, the Model MOU, which formed the basis of MOUs, concluded between TCCs and the UN, was amended to include explicit references to SEA; this was the first update since 1997.²¹⁴

One of the major changes in the 2007 Model MOU was that its amendments boosted the criminal accountability of national contingents who committed acts of serious misconduct during their deployment on a peacekeeping mission.²¹⁵ Articles 7 *bis* to 7 *sexiens* of the Model MOU demonstrate that the amended provisions on accountability, investigations, discipline and standards of conduct apply to all personnel contributed by a TCC,²¹⁶ addressing one of the areas that inhibited accountability. Additionally, Annex H of the 2007 Model MOU – titled ‘We Are United Nations Peacekeeping Personnel’ – details applicable

²¹⁰ United Nations General Assembly, “Comprehensive review of the whole question of peacekeeping,” 301-31.

²¹¹ Kent, “Peacekeepers as Perpetrators of Abuse,” 90.

²¹² *Ibid.*, 88.

²¹³ Murphy, 533.

²¹⁴ Deen-Racsmány, 14.

²¹⁵ *Ibid.*

²¹⁶ Deen-Racsmány, 3; United Nations General Assembly, “Manual on Policies and Procedures Concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions (COE Manual),” United Nations General Assembly document A/C.5/63/18, 29 January 2009, <https://undocs.org/A/C.5/63/18>.

standards of conduct applicable to all personnel, including specific references to refraining from transactional sex, sex with minors or any other acts of SEA.²¹⁷

The 2007 Model MOU also introduced a new investigative process that differed from pre-existing processes by placing the obligation of conducting investigations into serious misconduct (which includes sexual exploitation) on the TCC as opposed to the OIOS and other UN structures. However, in this configuration, the UN is still able to conduct a preliminary fact-finding inquiry in order to preserve evidence in the event that national governments do not act timeously.²¹⁸

Without going into all of the technical details of the 2007 Model MOU – a 63-page chapter forming part of the broader policy and procedure manual – the Model MOU undoubtedly increased the responsibility of TCCs in ensuring their personnel were familiar with UN standards of conduct and in investigating and taking action against allegations of sexual misconduct. For instance, it creates an obligation for TCCs to inform the UN of evidence of serious misconduct and to forward it to its national authorities for domestic proceedings.²¹⁹ While the increased obligations on states to take action are commendable, they are constrained by the limited ability of the UN itself to enforce compliance from states. The UN additionally assumes a more subsidiary role in investigations, unlike prior to 2007 when the UN conducted investigations against national contingents,²²⁰ which renders information sharing at the discretion of authorities if they are not restricted by domestic regulations.²²¹ The UN is also required to share evidence it has collected with national authorities. While this may result in improved chances of prosecution where allegations have been substantiated, it can also allow states to hinder accountability measures by obstructing investigations through recalling suspected perpetrators and preventing cases from proceeding to the Board of Inquiry.²²²

The way that the UN implements its policies must also be considered against the backdrop that it may prove impractical or unrealistic to expect peacekeeping personnel to remain abstinent and comply with the prohibition of soliciting prostitutes, especially when condoms

²¹⁷ Deen-Racsomány, 15; United Nations General Assembly, “Manual on Policies and Procedures,” 223-224.

²¹⁸ Deen-Racsomány, 17.

²¹⁹ *Ibid.*, 17-18.

²²⁰ Kanetake, 205.

²²¹ Deen-Racsomány, 18.

²²² *Ibid.*, 18-19.

are provided as part of HIV/AIDS awareness and prevention campaigns.²²³ However, the necessary provision of condoms to combat the spread of HIV/AIDS may appear implicitly to condone sexual interactions. While the Model MOU refers to “special constraints in [peacekeepers’] public and private lives” in the course of their work as peacekeepers,²²⁴ the prohibition of prostitution raises the question of whether enforced chastity can be considered such a special constraint.

3.3.4. UN Sexual Exploitation and Abuse Resolution S/RES/2272, Preventative and Remedial Action

In 2016, the UNSC passed resolution S/RES/2272 in response to the public attention that was drawn to the SEA allegations and evidence of impunity at the UN’s mission in the CAR – United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA).²²⁵ While the resolution reaffirms many of the existing provisions of the zero tolerance policy, it also requests that the entire military or police contingent be dismissed when members therein have been subject to allegations of sexual misconduct and the state from which they hail has failed to follow due process regarding the investigation and reporting of the allegations.²²⁶ This resolution demonstrates a welcome shift in the way that the UN has enforced its zero tolerance policy, although the contingent repatriation mechanism does not appear to include civilian personnel and therefore leaves room for continued abuses by civilian personnel.²²⁷

The UN has three key methods of remedial action for victims that form the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel. These methods were adopted by the

²²³ Kent, “Peacekeepers as Perpetrators of Abuse,” 87; United Nations General Assembly, “Comprehensive review of the whole question of peacekeeping,” 19.

²²⁴ United Nations General Assembly, “Manual on Policies and Procedures,” 223.

²²⁵ Sarah Smith, “Accountability and sexual exploitation and abuse in peace operations,” *Australian Journal of International Affairs* 71(2017): 405.

²²⁶ United Nations Security Council, “Resolution 2272 (2016),” United Nations Security Council document S/RES/2272 (2016), 11 March 2016, https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s_res_2272.pdf.

²²⁷ Sarah Smith, 417.

UNGA in 2007: the Trust Fund in Support of Victims of Sexual Exploitation and Abuse (Trust Fund); paternity claims and victim assistance.²²⁸

In 2016, the Trust Fund was established by the UNSG and supports specialised projects that provide services for victims and strengthens communal SEA complaint networks in the DRC. The Trust Fund has USD 2 million from voluntary contributions from 19 states – of which South Africa is not one – and approximately USD 317,000 from the withheld pay of peacekeeping personnel whose SEA allegations were substantiated. These funds are used to support victims, victim support services and education and training of victims in the Central African Republic and Liberia.²²⁹

Another measure that the UN has endorsed to address SEA is increasing the proportion of women in peacekeeping missions,²³⁰ especially when considering that sexual misconduct is primarily committed by male peacekeepers whose victims are primarily women as well as young girls and boys. The logic behind increasing female participation in peacekeeping goes beyond gender equity; the discipline of male peacekeepers is believed by some scholars to improve when they work with women. Increased visibility of women in peacekeeping also creates role models for local women in communities served by peacekeeping missions.²³¹ In addition, even if the increased female presence does not directly contribute to decreased incidents of SEA, it results in increased reporting from victims. The increased presence of women may also serve to temper hyper-masculine military that allow such actions to occur, often excused with the notion that ‘boys will be boys’.²³² However, in this line of argument one must not ignore that women themselves can be perpetrators of similar crimes and often are unwilling to report misconduct of their male colleagues, despite their obligations to do so.²³³

Given the institutional and legal constraints facing the UN in terms of the accountability mechanisms at its disposal – repatriation or banning from future missions – the UN could be

²²⁸ “Remedial Action,” United Nations Conduct, accessed 25 June 2018, <https://conduct.unmissions.org/remedial-action>.

²²⁹ “Trust Fund in Support of Victims of Sexual Exploitation and Abuse,” United Nations, accessed 25 June 2018, <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/trust-fund>.

²³⁰ Sarah Smith, 411; Olivera Simić, “Does the Presence of Women Really Matter? Towards Combating Make Sexual Violence in Peacekeeping Operations,” *International Peacekeeping* 17(2010): 188.

²³¹ Simić, 189.

²³² *Ibid.*, 189, 192, 195.

²³³ Simić, 195; United Nations General Assembly, “Manual on Policies and Procedures,” 223-224.

more effective at promoting preventative measures. The Zeid Report represented the first comprehensive attempt not only to prevent SEA but to address the underlying institutional cultures that unintentionally foster it. Preventative measures that the UN undertakes are comprised of pre and post-deployment training, public outreach to local communities within the host nation, vetting for records of prior misconduct while in the service of the UN as well as carrying out risk assessment and risk management activities in the area where the mission is to be conducted.²³⁴

Despite this, in 2013, an internal UN report made recommendations that essentially mirrored those made by the Zeid Report, with a focus of strengthening the enforcement of policy.²³⁵ This demonstrates that the UN's comprehensive policy frameworks are still struggling to translate policy outcomes into changed behaviour over a decade later. However, the immunity afforded to peacekeeping personnel derived from the 1946 Convention on the Privileges and Immunities of the United Nations, which is rooted in Article 105(1) of the UN Charter and the SOFAs,²³⁶ remains perhaps the largest single obstacle to achieving accountability through policy enforcement.

3.4. UN practices about Sexual Misconduct in MONUC and MONUSCO

The formulation of new policies and guidelines in response to investigations, while commendable, does not always translate into changes in behaviour.²³⁷ Thus, the purpose of this section is to outline how the aforementioned provisions of Bulletin ST/SGB/2003/13 and the Zeid Report have been implemented by the relevant UN bodies, and not to perform an evaluation of these interventions *per se*, as it falls beyond the scope of this research.

Prior to the zero-tolerance era, the UN, through the DPKO, had measures in place to combat SEA including pre-deployment training, codes of conduct for uniformed personnel, an initiative to address human trafficking and OIOS investigations.²³⁸ However, it became clear that the DPKO was limited in its capacity to address SEA effectively, especially when the

²³⁴ "Prevention," United Nations Conduct, accessed 26 June 2018, <https://conduct.unmissions.org/prevention>.

²³⁵ Sarah Smith, 409.

²³⁶ Odello, 360; Notar, 421.

²³⁷ Murphy, 538.

²³⁸ Shotton, 98-99.

accused formed part of national contingents whose states retained the exclusive authority over their discipline.²³⁹

The UN met the Zeid Report with action, especially regarding the introduction of preventative measures. TCCs were sent mandatory pre-deployment training modules on SEA-related conduct; missions were also requested to provide recreation and welfare facilities to all personnel.²⁴⁰ A team responsible for overseeing conduct and discipline was established within the DPKO, and teams were deployed to the various Missions, where processes for reporting, investigation and monitoring of allegations were put in place.²⁴¹ After 2005, the OIOS was also permitted to investigate allegations of serious misconduct relating to national contingents, which was not previously the case; these OIOS investigations could also result in repatriation.²⁴²

One of the most vital UN-led processes in combatting SEA is the allegation investigation procedure. This procedure is comprised of a preliminary investigation to establish facts; if the evidence identified suggests that serious misconduct has occurred, the investigation is reviewed by the Board of Inquiry and the appropriate action is recommended.²⁴³ Focal points – who are responsible for receiving reports, identifying patterns and monitoring incidents – also participate in investigative processes and submit their recommendations in a report to the Special Representative of the Secretary-General, after which a decision is taken on whether the alleged perpetrator will be repatriated to their country of origin.²⁴⁴ Despite this, according to scholars like Deen-Racsmány and Sarah Smith, there is little evidence that repatriation serves as a sufficient deterrent of misconduct, with on-site prosecutions like courts-martial serving as a more effective deterrent.²⁴⁵

While the improved investigative processes make for better reporting, these investigative processes are not without fault. For instance, many Missions lack the capacity for personnel monitoring and possess weak capacity, which hinders effective coordination between

²³⁹ Ibid., 100.

²⁴⁰ Zsuzsanna Deen-Racsmány, “The Amended UN Model Memorandum of Understanding: A New Incentive for States to Discipline and Prosecute Military Members of National Peacekeeping Contingents?” *Journal of Conflict and Security Law* 321(2011): 12-13.

²⁴¹ Ibid., 13.

²⁴² Ibid.

²⁴³ Kent, “Peacekeepers as Perpetrators of Abuse,” 88.

²⁴⁴ Ibid., 88-89.

²⁴⁵ Deen-Racsmány, 11; Sarah Smith, 406.

different categories of personnel as well as for incomplete reporting.²⁴⁶ Additionally, investigations have been criticised for their lack of adequate witness protection procedures.²⁴⁷ Several of the issues related specifically to investigative procedures could be addressed with the appointment of a specialised UN investigators, which would ensure that investigative capacity can be met, and the appointment of people with sufficient knowledge of domestic TCC laws, so that if cases are referred to national authorities for prosecution, they already meet the relevant standards.²⁴⁸ In this regard, courts-martial during the Mission are an effective method of ensuring that there is access to evidence and witnesses. Courts-martial additionally demonstrate a commitment to accountability for both the victims and the wider community who may not have been victims of SEA.²⁴⁹

Following the presentation of the Zeid Report, which also called for mission-specific interventions beyond the more general recommendations, certain interventions were undertaken by MONUC specifically, to force compliance with the zero-tolerance policy. Some of the measures included prohibiting peacekeepers from going to local establishments known to be popular for prostitution, imposing curfews, and requiring personnel to always wear their uniforms to facilitate their identification and monitoring their movements.²⁵⁰ However, the occurrence of SEA is not unique to the DRC, although it may vary in scale across peacekeeping operations, but generally occurs in situations where there are generally problems with compliance with codes of conduct and the presence of ill-discipline.²⁵¹ The DPKO concluded that bringing an end to SEA would require changes to rules and procedures as well as changes in the attitudes and culture of peacekeeping missions.²⁵²

After 2005, the DPKO created the Conduct and Discipline Unit (CDU) under the Office of the Special Representative of the Secretary-General.²⁵³ The CDU is responsible for overseeing the training of peacekeepers, monitoring activities, making preliminary

²⁴⁶ Kent, "Peacekeepers as Perpetrators of Abuse," 89.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Shotton, 103; Kent, "Peacekeepers as Perpetrators of Abuse," 89.

²⁵¹ Shotton, 104.

²⁵² Ibid.

²⁵³ Catherine Lutz, Matthew Gutmann and Keith Brown, *Conduct and Discipline in UN Peacekeeping Operations: Culture, Political Economy and Gender* (Providence: Watson Institute for International Studies, 2009), 2; "Briefing Materials," Public Information Division - United Nations Organization Mission in the Democratic Republic of Congo (MONUC), accessed 19 July 2018, https://peacekeeping.un.org/mission/past/monuc/documents/monuc_background2009.pdf.

assessments of allegations and providing policy guidance. The training provided also has mission specific elements; for example, in MONUC, additional regulations on peacekeepers deemed appropriate by the CDU included off-limits areas, curfews, welfare activities and the prohibition of non-UN personnel travelling in UN vehicles.²⁵⁴ The CDU maintained offices in Kinshasa, at the headquarters of MONUC and established the Field Conduct and Discipline Team (FCDT) in Goma, Bunia and Bukavu, expanding to other locations over the years; field visits were also conducted by CDU personnel. These have continued to operate into MONUSCO.²⁵⁵

Additionally, in 2008, a Conduct and Discipline Advisory Committee (CDAC) was established, comprised of senior personnel, to “reinforce standards and the commitment to compliance with the zero-tolerance policy.”²⁵⁶

The extensive CDU set-up from MONUC was continued in MONUSCO. Moreover, MONUSCO’s Conduct and Discipline Team (CDT) advises the Mission Head on all matters relating to conduct and discipline in the mission has other functions. These functions include: providing guidance on the establishment SEA preventative measures (including capacity-building support on SEA awareness and community outreach); receiving, tracking and reporting on all allegations; liaising with all actors involved in misconduct allegations; as well as liaising with all peacekeeping mission stakeholders regarding misconduct policies and management.²⁵⁷

3.5. UN SEA Practices and Norm Internalisation Mechanisms

The UN has an extensive set of SEA-related practices at the institutional and field levels. Of notable concern is the Zeid Report’s revelation that peacekeepers did not understand that the women in their operation areas were traumatised and vulnerable. This demonstrates a lack of understanding of the appropriate behaviour towards woman and the norms that underpin what is appropriate. This presents a challenge regarding internalisation, especially because the UN

²⁵⁴ “Briefing Materials,” Public Information Division.

²⁵⁵ “CDU Structure,” United Nations Organization Stabilization Mission in the Democratic Republic of Congo, accessed 31 October 2018, <https://monusco.unmissions.org/en/cdu-structure>; “Briefing Materials,” Public Information Division.

²⁵⁶ Public Information Division, “Briefing Materials.”

²⁵⁷ “CDU Mandate,” United Nations Organization Stabilization Mission in the Democratic Republic of Congo, accessed 31 October 2018, <https://monusco.unmissions.org/en/conduct-and-discipline>.

is a key actor in the internalisation process. Although it may appear that the frameworks are tools of coercion to force compliance or adoption of the norms therein, the UN's lack of real authority in enforcing conduct and authority is a result of its inability to attach incentives or conditions to appropriate behaviour standards. This is further hampered by the fact that it is the UN that is dependent on the contributions of member states, which is not the usual dynamic at play in IGO conditionality-based coercion.

The zero-tolerance policy framework is clearly rooted in a normative understanding that to sexually abuse or exploit women – especially during peacekeeping – is not appropriate. There is no question that the UN supports these norms. The UN has institutionalised these norms through the various resolutions and agencies dedicated to eradicating gender-based violence. Notions of appropriateness, having been set by the UN, must be internalised by states through various methods of socialisation: strategic calculations, role playing, or normative suasion. However, internalisation can only be achieved by through truly interacting with these policies and the norms that underpin them.

The logic of appropriateness, a key element of the process of norm internalisation through emulation, is exceptionally relevant here. The UN's SEA frameworks cannot be interpreted as being tools of competition or learning, as those are primarily state-driven processes. Additionally, as already stated, the UN lacks the coercive leverage for force compliance in this way. The problem lies here: while the UN embraces norms concerning the appropriate behaviour towards women, its inability to use its position as an IGO to achieve normative suasion has left it in a precarious political dynamic. Its dependence on member states for implementation of its policies limits its ability to punish those who violate the norms by displaying inappropriate behaviour.

3.6. Conclusion

Following revelations of widespread peacekeeper sexual misconduct in the early 2000s, the UN committed to reforming its peace mission policy framework by introducing a zero-tolerance policy. While the individual documents that make up the policy are extensive, the UN has limited influence when it comes to actually ensuring that policies are adhered to and punishing those who do not.

The introduction of Bulletin ST/SGB/2003/13 in 2003, the Zeid Report in 2005, the amended Model MOU in 2007 and the several resolutions and strategies in between outline a strategy

based on a normative understanding of what constitutes appropriate and inappropriate behaviour towards women by UN personnel. Mission specific interventions introduced in MONUC and MONUSCO additionally demonstrate commitment to zero-tolerance for those not complying with the underlying norms. This framework can be understood as a weak mechanism of coercion as the UN lacks the relevant authority over states, on which it relies for contributions of personnel and resources.

The framework can therefore best be understood as a mechanism of emulation. As an organisational platform that plays a crucial role in the diffusion of norms, the UN's framework sets the standards of appropriateness. In the absence of coercive measures, states must then adopt these standards, with norm internalisation taking place when states engage and interact with the norms. Learning and competition are state-driven processes and therefore have little relevance. As such, this relationship between states and its interaction with the UN, bearing in mind the delicate collaborative arrangements that underscore peace missions, is where the foundation of internalisation is laid.

4. South African personnel in MONUC and MONUSCO

4.1. Introduction

South Africa has remained one of the largest African contributors and participants in peacekeeping missions across the African continent hosted by the UN, African Union (AU) and the Southern African Development Community (SADC) since 1999. The country has provided assistance in Lesotho, Burundi, Sudan, South Sudan and the Central African Republic. These deployments are necessary for the South African government's pursuit of foreign policy objectives regarding its role as a peace-broker.²⁵⁸ However, large volumes of predominantly male peacekeepers deployed to fragile post-conflict environments often result in the stimulation of the local sex industry,²⁵⁹ in which South African National Defence Force (SANDF) personnel have been reported to partake.

South Africa was one of the first countries to deploy personnel to the DRC, with the first deployment in 1999. This deployment was locally called 'Operation Mistral', following the conclusion of the Lusaka Agreement. South Africa deployed more forces after the assassination of then-president Laurent-Désiré Kabila and the conclusion of the Sun City agreement in 2001 and 2002, respectively.²⁶⁰

South Africa has also contributed personnel to the United Nations Operation in Burundi (ONUB), which took over from the African Union Mission in Burundi (AMIB) in 2004.²⁶¹ South Africa had previously played a vital role as a mediator in Burundi prior to and during AMIB, however, the formation of ONUB – with the rapid increase of deployed personnel – had the unintended consequence of creating an increased supply and demand for sex workers,²⁶² despite peacekeepers' prohibition from patronising sex workers. South African

²⁵⁸ Thomas Mandrup, "An uncertain future: South Africa's national defence force caught between foreign-policy ambitions and domestic development," *Journal of Eastern African Studies* 12(2018): 138

²⁵⁹ Kent, "Protecting civilians from UN peacekeepers and humanitarian workers," 62.

²⁶⁰ Mandrup, 144.

²⁶¹ Gilbert M. Khadiagala, "Burundi, 2002–2012," in *Responding to Conflict in Africa*, ed. Jane Boulden (New York: Palgrave MacMillan, 2013), 106.

²⁶² Kent, "Protecting civilians from UN peacekeepers and humanitarian workers," 46.

peacekeepers were alleged to have been involved in several incidents of sexual misconduct and other offences related to poor discipline.²⁶³

The UN's mission in the DRC has been characterised by reports of high levels of SEA committed by peacekeeping personnel, especially following 2004 when this was widely reported in international media outlets. Allegations of children used in prostitution rings and being raped by peacekeepers initiated investigations that brought about much needed UN-level interventions and reform. However, while it remains unclear if, or the extent to which, African personnel were involved in these activities, members of South African contingents have more generally been found to have engaged in activities which violate the UN's zero-tolerance policy.

This chapter focuses on South African personnel deployed in MONUC and MONUSCO and policies enacted by the South African government to address sexual misconduct among its personnel. While in some instances, specific reference will be made to the total number of allegations, it is important to consider the limitations of the data on reported allegations in this regard.

4.2. South African personnel in MONUC

In 2001, South Africa made its first contribution to MONUC, following an urgent request by the UN for medical evacuation and small advance teams; 48 military police personnel were also deployed.²⁶⁴ In 2003, South Africa was called upon to make its first significant contribution of 1,000 soldiers, and subsequently, an additional 1,500 personnel comprised of infantry battalions and aviation regiments.²⁶⁵

Although South Africa has been an early personnel contributor to MONUC, there is limited information available directly concerning allegations of SEA against South African peacekeepers prior to the mid-2000s. When the first media reports broke detailing the expansive allegations of SEA by peacekeepers in the DRC, very few national contingents

²⁶³ Mandrup, 133.

²⁶⁴ Lindy Heinecken and Rialize Ferreira, "Fighting for peace': South Africa's role in peace operations in Africa (Part I)," *African Security Review* 21(2012): 27; Garth Shelton, "South Africa – Defence Transformation and New Security: Progress and Prospects," SAIIA/Bradlow Report No. 35(2003): 11; "OPERATION MISTRAL – DEMOCRATIC REPUBLIC OF CONGO," Republic of South Africa Department of Defence, accessed 19 July 2018, <http://www.dod.mil.za/operations/international/mistral.htm>.

²⁶⁵ "OPERATION MISTRAL," Republic of South Africa Department of Defence.

were identified. An investigative journalistic piece by Holt and Hughes referred to peacekeepers from Uruguay and Morocco soliciting sex from children in Bunia. The UN did not release the nationalities of alleged perpetrators in official documents to avoid embarrassing the states on which it was reliant for contributions. A Human Rights Watch investigation (HRW) identified that one French and six Moroccan peacekeepers were repatriated following SEA-related investigations; however, the nationalities of other personnel who had been sexually exploiting the children who had been interviewed were either not known or not published.²⁶⁶ Media reporting from global news publications implicated Tunisian, Pakistani, Nepalese and South African peacekeepers as being in the first major allegations of SEA, but provided little additional information.²⁶⁷

Thus, although the UN did not release information on concerning the allegations against South African personnel, the existing media reporting is evidence enough that South African personnel were involved in sexual misconduct at a time when the zero-tolerance policy was in its formative stages. However, the information that is provided by the UN is not without its shortcomings. UN records available online regarding SEA in MONUC only date back to 2007, and between 2007 and 2010 when MONUC became MONUSCO. In fact, UN data that includes national affiliations of perpetrators is relatively recent.

Although this study's focus is sexual misconduct, South African personnel have been reported generally to possess poor discipline. In instances where misconduct was not related to offences of a sexual nature, this information is still relevant. Poor conduct and discipline demonstrate an inability to adhere to the standards of behaviour that the UN has deemed appropriate during peace missions.

Between 2002 and 2008, SANDF operational law directorate statistics revealed that South African personnel in the DRC and Burundi were found guilty of over 1,000 cases of misconduct for acts relating to drunkenness, absence without leave and disobeying commands.²⁶⁸ In the DRC, South African personnel had been involved in 264 cases and 546

²⁶⁶ Anneke Van Woudenberg, "MONUC: A Case for Peacekeeping Reform," US House Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations testimony, 1 March 2004, <https://www.hrw.org/news/2005/02/28/monuc-case-peacekeeping-reform>.

²⁶⁷ Allred, 5.

²⁶⁸ Neethling, 147.

military trials.²⁶⁹ Serious criminal cases were also opened involving incidents of assault, mistreatment of subordinates, intimidation, theft, refusal to obey commands, murder and rape, several of which involved high-ranking officers.²⁷⁰ A UN chief internal investigator stated in 2005 that South African personnel were included in an OIOS investigation, and that the SANDF court-martialled a South African colonel for an alleged sexual assault on a Congolese interpreter of unknown gender.²⁷¹

In a 2008 article in an internal SANDF magazine, a piece written by a colonel noted general attitudes of ill-discipline among SANDF personnel, citing officers concerned primarily with self-enrichment and uniformed members disappearing during working hours as examples.²⁷² This general trend of poor discipline among SANDF troops came to the forefront following illegal protest action by approximately 2,000 soldiers, 1,300 of whom were subsequently dismissed; the then-Minister of Defence was forced to acknowledge that there was a “serious problem of discipline in the defence force”.²⁷³

The general history of misconduct by South African personnel demonstrates that during MONUC, there was a pattern of general misconduct by South African military contingents. Given the significant volume of misconduct cases – although it is unknown exactly how many of these took place in the DRC specifically – it would not be surprising to see that there were more cases of SEA involving members of the SANDF. Empirical evidence suggests that there is a trend between general misconduct, poor discipline and SEA, where more of one begets more of the other.²⁷⁴ High levels of general misconduct can be representative of a breakdown of disciplinary structures; a breakdown of such structures may result in SEA being tolerated among contingents.

Although South African military personnel are often cited as having superior training and equipment than their African counterparts, during the course of MONUC this was proven not

²⁶⁹ Alex Vines, “South Africa’s politics of peace and security in Africa,” *South African Journal of International Affairs* 17(2010): 60.

²⁷⁰ Neethling, 147; Vines, 60.

²⁷¹ Peter Fabricius, “DRC peacekeepers allegedly abused girls,” *IOL News*, 12 January 2005, <https://www.iol.co.za/news/africa/drc-peacekeepers-allegedly-abused-girls-231340>.

²⁷² J. Khanye, “Discipline within the SANDF,” *South African Soldier* 15(2008): 7, <http://www.dod.mil.za/sasoldier/2008/oct2008.pdf>.

²⁷³ Neethling, 146; “Sisulu: Serious discipline problem in SANDF,” *News24*, 8 September 2009, <https://www.news24.com/SiteElements/HomePage/NewsYouShouldKNOW/Sisulu-Serious-discipline-problem-in-SANDF-20090908>.

²⁷⁴ Moncrief, 726.

to be the case.²⁷⁵ Therefore, despite the relative similarity among African TCCs, South Africa still stands out as having a higher proportion of allegations against its personnel for SEA, although it is possible that other TCCs are committing offenses at similar rates and they simply have not been reported as much. South Africa also contributes more personnel than many of the other TCCs, therefore more personnel also create more opportunities for misconduct.

4.3. South African personnel in MONUSCO

Since MONUSCO was established, South Africa has continued to play a leading role in its contributions, providing between 1,200 and 1,500 personnel between 2010 and 2012.²⁷⁶ While this has decreased to approximately 1,158 in early 2018,²⁷⁷ South Africa also contributes to the Force Intervention Brigade (FIB), a force authorised by UNSC resolution 2098 in 2013. This resolution was created to neutralise offensive rebel groups including M23 that had taken hold of parts of the Eastern DRC and posed a threat to civilians.²⁷⁸

UN data and media reporting continues to single out South Africa for the sexual misconduct of its personnel during MONUSCO. Between 2015 and 2018, the data indicated that 28 of the total 76 allegations were attributed to South African personnel.²⁷⁹ While there may be several other explanations for this, the South African allegations are still higher than the 13 allegations levied against Pakistan, India, Bangladesh, Tanzania and Uruguay – who contribute almost 10,000 personnel in total – combined over the same period.²⁸⁰ This demonstrates that even with the UN’s comprehensive zero-tolerance policy in place by the time MONUSCO was operational, South African non-compliance remains a concern.

During a brief to the National Assembly in 2013, the Minister of Defence reported that 93 members of the SANDF deployed as peacekeeping personnel to MONUSCO had cases of

²⁷⁵ Vines, 61.

²⁷⁶ Heinecken and Ferreira, “‘Fighting for peace’ (Part I),” 13.

²⁷⁷ “MONUSCO at a Glance,” United Nations Organisation Stabilization Mission in the Democratic Republic of Congo, February 2018, <https://monusco.unmissions.org/en/monusco-factsheets>.

²⁷⁸ Andre Roux, “Can the deployment of the UN Intervention Brigade in the DRC, and specifically South Africa’s role as a core component of this force, achieve its ambitious goals?” Institute for Security Studies, 24 April 2013, <https://issafrica.org/iss-today/south-africa-and-the-un-intervention-brigade-in-the-drc>.

²⁷⁹ “Sexual Exploitation and Abuse,” United Nations Conduct.

²⁸⁰ “More than a thousand South African soldiers deployed with MONUSCO,” *defenceWeb*, 29 January 2018, http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=50507; “Sexual Exploitation and Abuse,” United Nations Conduct.

misconduct brought against them, at least 23 of which involved incidents of sexual abuse, sexual exploitation, unspecified assaults against women and rape.²⁸¹ South Africa was again in the spotlight for sexual misconduct in a 2015 OIOS statement; nine allegations were levelled against its personnel deployed on UN peacekeeping missions in the DRC, Sudan and South Sudan.²⁸² In the same year, South Africa reportedly recalled 50 of its personnel stationed in the DRC for alleged breaches of SANDF and UN codes of conduct regarding curfew violations,²⁸³ although it is unclear whether any of these were directly related to SEA allegations, SEA incidents often occur when curfews are violated.²⁸⁴

In February 2018, four allegations of SEA were made against South African personnel for physical violence against a 17 year-old Congolese boy, and the sexual exploitation of at least three women, one of whom was seeking child support for a child allegedly fathered by a peacekeeper, in the Beni, Goma and Sake towns in North Kivu province.²⁸⁵ South African authorities deployed a team including special legal practitioners and humanitarian law experts, at the request of the UN, to assist with the investigation into the allegations as well as related matters of paternity,²⁸⁶ however, the outcome of these investigations, especially those related to paternity, were unclear.

Media reporting by the national South African Broadcasting Corporation (SABC) in March 2018 stated that the UN was “reviewing the deployment of [SANDF] troops to its peacekeeping missions over growing concerns of misconduct and indiscipline within its ranks,”²⁸⁷ based on the nine allegations that had been made against South African peacekeepers between January and March of 2018. The review was in line with the

²⁸¹ Patel, “Peacekeepers behaving badly.”

²⁸² “SA soldiers worst sex offenders on UN missions.” *Mail & Guardian*.

²⁸³ Agence France-Presse, “South African troops accused of abuse in DR Congo: UN,” *Daily Maverick*, 12 February 2018, <https://www.dailymaverick.co.za/article/2018-02-12-south-african-troops-accused-of-abuse-in-dr-congo-un/>; Cold-Ravnkilde and Mandrup, 2.

²⁸⁴ United Nations General Assembly, “Special measures for protection from sexual exploitation and abuse: a new approach,” United Nations General Assembly document A/71/818, 28 February 2017, 28, https://monusco.unmissions.org/sites/default/files/a_71_818_1.pdf.

²⁸⁵ Agence France-Presse, “South African troops accused of abuse in DR Congo: UN.”

²⁸⁶ Graeme Hosken, “SA peacekeeping troops under investigation for torture of civilians,” *TimesLIVE*, 11 February 2018, <https://www.timeslive.co.za/news/south-africa/2018-02-11-sa-peacekeeping-troops-under-investigation-for-torture-of-civilians/>; “Further allegations surface against SA troops in the DRC,” *defenceWeb*, 13 February 2018,

http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=50705:further-allegations-surface-against-sa-troops-in-the-drc&catid=111:sa-defence.

²⁸⁷ Sherwin Bryce-Pease, “SA troops’ deployment in DRC under review,” *SABC News*, 27 March 2018, <http://www.sabcnews.com/sabcnews/sa-troops-deployment-drc-review/>.

provisions of UNSC resolution S/RES/2272, which permits the repatriation of entire units when there have been allegations of misconduct against some of its members.²⁸⁸

To combat the sexual exploitation and abuse of women in the DRC by South African personnel requires collaborative efforts between both the UN and South African authorities. The UN's zero-tolerance policy and its affiliated policies is the overarching framework within which all actors party to peace missions must comply. However, the UN's lack of enforcement capacity due to the legal and political arrangements that underpin these missions, TCCs like South Africa must also provide their own policy guidelines and take action to ensure that the UN's standards of appropriate behaviour towards women are upheld.

4.4. South African Policies: Sexual Misconduct

All South African personnel are required to behave in accordance with the established UN zero-tolerance policy as is outlined in Chapter 3. However, because of the political and legal arrangements between the UN and South Africa as a TCC, South Africa is responsible for the behaviour and discipline of its deployed personnel, even when they are under centralised UN control.

South African peace mission personnel of all categories receive UN designed pre-deployment training, to make them aware of the content of the zero-tolerance policy. Training and the documents that personnel sign indicate that any kind of sexual interaction with beneficiaries of aid, or are children is prohibited. South African personnel additionally agree to operate under 'special constraints', including refraining from participating in sexual exploitation or abuse in line with the UN conduct policies to which they are bound. Moreover, South African personnel remain bound by South African policies, especially in relation to what is or is not appropriate or permissible behaviour.

The 1999 South African Government *White Paper on South African Participation in International Peace Missions* (Peace Mission White Paper) provides the policy framework within which South Africa must operate when it contributes to IGO peace missions, like those of the UN. This document presents explicit provisions regarding discipline. It states clearly that military police personnel and force commanders included in deployments are

²⁸⁸ Bryce-Pease, "SA troops' deployment in DRC under review."

responsible for ensuring the “good order and discipline of their personnel.”²⁸⁹ Many of the personnel are drawn from the SANDF, and they must also behave in accordance with the SANDF Code of Conduct. In it, uniformed SANDF members pledge to, “treat all people fairly and respect their rights and dignity at all times, regardless of ... gender...”, to “not abuse [their] authority [or] position...” and in situations of armed conflict, they pledge not to “tolerate or engage in rape...”²⁹⁰

A UNGA report on the special measures to be taken for protection from SEA noted that South Africa intended to table a defence bill before Parliament to make SEA a specific offence,²⁹¹ especially since the guidelines in the SANDF Code of Conduct and the Peace Mission White Paper make no specific references to SEA. In September 2018, Minister of Defence, Nosiviwe Mapisa-Nqakula stated at the UN headquarters that the country is “in the process of finalising the Military Disciplinary Supplement Bill (Military Disciplinary Bill), which will prohibit and criminalise SEA offences in the area of deployment”, echoing the sentiments in the aforementioned UNGA report.²⁹²

The Military Disciplinary Supplement Bill, although not yet enacted, will replace the Military Discipline Supplementary Measures Act of 1999 (Military Disciplinary Act), which is currently in place.²⁹³ The Military Disciplinary Act jurisdiction makes explicit reference to rape as an offense that warrants military discipline, but does not include the more nuanced and robust interpretations of sexual abuse or exploitation as per the UN’s zero-tolerance policy.²⁹⁴ This may cause conflict when it comes to the application of military discipline; therefore the significance of the Military Disciplinary Bill’s enactment cannot be understated as the bill will align South Africa’s military discipline codes with those of the UN.²⁹⁵ While one can only speculate about the potential effects that the Military Disciplinary Bill may

²⁸⁹ Republic of South Africa Department of Foreign Affairs, “White Paper on South African participation in International Peace Missions (No. 20518),” (1999), 13-16.

²⁹⁰ Red de Seguridad y Defensa de América Latina, “Code of Conduct for Uniformed Members of the SANDF,” 12 February 2000, <https://www.resdal.org/Archivo/d0000124.htm>.

²⁹¹ United Nations General Assembly, “Special measures for protection from SEA,” 31.

²⁹² Sherwin Bryce-Pease, “S Africa addresses sexual abuse by UN peacekeepers,” *SABC News*, 26 September 2018, <http://www.sabcnews.com/sabcnews/s-africa-addresses-sexual-abuse-by-un-peacekeepers/>.

²⁹³ “Cabinet approves new Military Discipline Bill,” *defenceWeb*, 30 August 2018, http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=52944.

²⁹⁴ Republic of South Africa, Military Discipline Supplementary Measures Act, 1999 [No. 16 of 1999], *Government Gazette*, 23 April 1999.

²⁹⁵ Sherwin Bryce-Pease, “SA commits to root out sexual abuse by UN peacekeepers,” *SABC News*, 26 September 2018, <http://www.sabcnews.com/sabcnews/sa-commits-to-root-out-sexual-abuse-by-un-peacekeepers/>.

have, given that it has not yet been enacted, it certainly demonstrates a political move towards making explicit provisions within South African policies to combat SEA.

The DPKO requires all TCCs to provide it with legal frameworks that are applicable to their contingents during their deployment on UN peacekeeping missions.²⁹⁶ However, South Africa is one of the 76 TCCs that have not provided the DPKO with their legal framework on conduct.²⁹⁷ It is not clear why this has been the case; however, such a legal framework is more likely to be provided when domestic legal codes are in line with UN policies. The Military Disciplinary Bill's enactment may thus be another step forward towards full compliance with UN and DPKO requirements.

4.5. Conclusion

As one of the largest TCCs in the largest single and longest running UN peace mission, South African personnel sexual misconduct against women has been quite well documented, even in instances where UN data is vague or not available. Even before the UN began publishing the nationalities of SEA perpetrators, media reporting and acknowledgments from the South African government itself confirmed that SEA by its personnel was occurring. However, in these revelations, South Africa has maintained its commitment to honouring the zero-tolerance policy.

South African personnel is bound by UN standards of conduct and the UN's zero-tolerance policy is an explicit policy framework that has evolved since 2003 to prevent and address sexual misconduct by peace mission personnel of all categories by prescribing what constitutes appropriate behaviour. However, personnel deployed by South Africa simultaneously remain bound by domestic policies and codes of conduct – for example, SANDF personnel are still required to observe the SANDF Code of Conduct. Moreover, these domestic policies do not make explicit provisions for a nuanced understanding of sexual misconduct by peacekeepers and tend to classify it under broader themes to do with good discipline.

²⁹⁶ “Standards of Conduct,” United Nations Peacekeeping, accessed 19 June 2018, <https://peacekeeping.un.org/en/standards-of-conduct>.

²⁹⁷ Ibid.

South Africa's approach to UN peace missions focusses on remaining consistent with international standards and practices set by UN's Special Committee on Peacekeeping Operations.²⁹⁸ While the reliance on international standards may be beneficial when it comes to ensuring that South African participants are consistent with international best practice, it can become difficult to ensure accountability when n domestic and international standards are not aligned.

The absence of explicit South African SEA policy provisions that seek to add domestic relevance to the overarching zero-tolerance policy only serve to complicate the already delicate dynamics between South Africa and the UN when it comes to the division of labour in international peace missions. However, recent developments in the enactment of a Military Disciplinary Bill show that South Africa is moving closer towards aligning its domestic policies with those of the UN. While it is far too early to tell what effect these changes will have on the behaviour of personnel, they demonstrate at least a political commitment to embodying the values of the UN.

²⁹⁸ "Adaption of the traditional peacekeeping methods to produce more flexible and realistic solutions to emerging threats in Africa by the South Government's foreign military and diplomatic involvement," Republic of South Africa Department of International Relations and Cooperation, 11 October 2013, <http://www.dirco.gov.za/docs/2013pq/pq2700.html>.

5. South African Sexual Misconduct in MONUC and MONUSCO

5.1. Introduction

Chapter 4 explored how numerous allegations of sexual misconduct have been levelled against South African personnel in the DRC. The absence of an explicit prohibition of SEA in the South African policies with which personnel must comply, is likely to have exacerbated this situation. The Military Disciplinary Bill, which represents an attempt to align local policies with international standards regarding SEA, has not yet come into effect. Yet, this and other developments demonstrate that South Africa has a desire to combat SEA committed by its personnel.

This chapter explores the methods and practices implemented by South Africa, which are largely in accordance with the UN's zero-tolerance policy. When states declare a belief in a norm, it is reasonable to expect their actions and behaviour to reflect this. South Africa has demonstrated both a political and practical commitment to norms concerning appropriate behaviour towards women in peace missions. However, its personnel continue to be singled out for their perpetration of SEA.

5.2. South African Practices relating to South African Sexual Misconduct in MONUC and MONUSCO

South Africa's commitment to the UN's zero-tolerance policy at a political level is clear. In September 2018, Minister Mapisa-Nqakula made the following statement at a meeting about peacekeeping at the UN's headquarters:

“South Africa is fully committed to rooting out sexual abuse by peacekeepers and take such allegations in a serious light. Furthermore, South Africa is committed to the promotion and protection of human rights, with particular focus on the rights and welfare and protection of women in conflict countries.”²⁹⁹

The above statement not only illustrates support for combatting SEA but it also demonstrates a political commitment to the protection of women from sexual abuse. Considered against

²⁹⁹ Sherwin Bryce-Pease, “S Africa addresses sexual abuse by UN peacekeepers.”

this backdrop, South Africa's participation in UN initiatives dedicated to the eradication of SEA is consistent with this position. For example, South Africa is member of the UNSG's Circle of Leadership (CoL). While the CoL is primarily a means by which states can declare their commitment to ending SEA, it provides the opportunity for the exchange of ideas, progress, and practices in combatting SEA while supporting pre-existing strategies.³⁰⁰ Another symbolic political action undertaken by South Africa was the signing of the Voluntary Compact on Elimination of Sexual Exploitation and Abuse, which expresses a commitment to prevent and address SEA.³⁰¹

While South Africa has taken steps in aligning its domestic policies with the UN, and supports UN initiatives, the practices that it currently undertakes are just as important in understanding how it addresses sexual misconduct by its personnel. Although the Military Disciplinary Bill's enactment is forthcoming, South Africa, through its actions, already participates in international strategies aimed at addressing SEA; such actions include "appropriate preventative actions, awareness campaigns and pre-deployment training."³⁰²

Examples of South African SEA-specific practices include a request for the UN to provide a two-day pre-deployment training workshop for 820 peacekeepers on SEA prevention in June 2017.³⁰³ Other preventative actions include the establishment of a vetting committee in order to identify personnel with previous or current criminal legal proceedings or violations of international humanitarian or human rights law.³⁰⁴ The vetting committee also identifies previous disciplinary repatriations or orders prohibiting further peacekeeping participation in order to prevent these individuals from being re-deployed.³⁰⁵ There has also been an instance

³⁰⁰ United Nations Secretary-General, "Collective Statement of the Members of the Secretary-General's Circle of Leadership on the Prevention of and Response to Sexual Exploitation and Abuse in United Nations Operations," 27 September 2018, <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/collective-statement-members-secretary-general-circle-leadership>.

³⁰¹ "Voluntary Compact," United Nations, accessed 3 November 2018, <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/voluntary-compact>.

³⁰² Bryce-Pease, "S Africa addresses sexual abuse by UN peacekeepers."

³⁰³ "MONUSCO supports South African Defence Forces' efforts to prevent sexual exploitation and abuse in a first of its kind training," United Nations Peacekeeping, 1 December 2017, <https://peacekeeping.un.org/en/monusco-supports-south-african-defence-forces-efforts-to-prevent-sexual-exploitation-and-abuse-first>.

³⁰⁴ United Nations General Assembly, "Special measures for protection from SEA," 28.

³⁰⁵ Ibid.

of contingents being repatriated proactively for curfew violations, given that curfew violations often occur in conjunction with SEA.³⁰⁶

South Africa also has a three-person national standby investigative team in the DRC, which can be deployed within 72 hours to investigate allegations of misconduct against its contingents.³⁰⁷ For example, in 2018 South Africa deployed a team including legal practitioners and humanitarian law experts, at the request of the UN, to assist with investigations into SEA allegations as well as related to matters related to paternity.³⁰⁸ The alleged perpetrators' payment is suspended while allegations are being investigated. The payments are reimbursed if no supporting evidence is found;³⁰⁹ however, when this is not the case, it is likely that these payments are placed in the Trust Fund.

In the same year, a joint Parliamentary briefing on international peacekeeping operations by the SANDF and Department of International Relations and Cooperation, reported that South African personnel stationed in the DRC under MONUSCO were trained in accordance with the UN's zero-tolerance policy. They also signed legal documents pledging not to engage in SEA.³¹⁰ In the briefing, it was also noted that all allegations against peacekeepers were investigated and uniformed personnel were court-martialled and replaced when found to have been guilty of serious misconduct (SEA is classified as serious misconduct in UN frameworks).³¹¹ The use of courts-martial to find personnel soldiers guilty of SEA accountable has been publicly documented, and the use of this procedure is in line with UN guidelines.³¹² However, the Military Disciplinary Act – which currently governs the use of South African military courts – does not yet include specific or clear provisions relating to sexual exploitation or acts that constitute sexual abuse under the zero-tolerance policy but are not necessarily rape. This policy mismatch may ultimately render accountability efforts less effective.

³⁰⁶ Ibid.

³⁰⁷ Ibid., 29; Sherwin Bryce-Pease, "SA troops' deployment in DRC under review."

³⁰⁸ Hosken; "Further allegations surface against SA troops in the DRC."

³⁰⁹ United Nations General Assembly, "Special measures for protection from SEA," 52.

³¹⁰ "International Peacekeeping operations: SANDF & DIRCO briefing," Parliamentary Monitoring Group, 2 March 2018, <https://pmg.org.za/committee-meeting/25896/>.

³¹¹ Ibid.

³¹² Cold-Ravnkilde and Mandrup, 3; United Nations, "Update on Allegations of Sexual Exploitation and Abuse in United Nations Peacekeeping Operations and Special Political Missions," 17 May 2016, 3; United Nations General Assembly, "Special measures for protection from SEA," 29.

The male-heavy composition of peace missions is male-heavy and SEA is typically understood to be perpetrated by men. The inclusion of greater numbers of women has been thought to be a strategy to address SEA. South African efforts to increase the presence of women is in line with UN frameworks on gender mainstreaming – including UNSC resolution 1325(2000) –³¹³ and the assumption is that the presence of more women would stem sexual misconduct.³¹⁴ While official South African policies on the increased inclusion of women in the armed forces fall more neatly under military transformation policies, they are also touted as a means to address SEA by the predominantly male military.³¹⁵

These assumptions are driven by perceptions that women can influence the behaviour of their male counterparts, that they are more compassionate towards victims of sexual and gender-based violence and that they serve as role models to local women and may encourage reporting of crimes.³¹⁶ Other non-SEA-focused reasons provided for the increased presence of women include that they are better able to perform body searches on women, as well as work with women’s prisons and disarmament, demobilisation and reintegration (DDR) centres.³¹⁷

South Africa already has the highest proportion of female personnel deployed in the DRC, with 18 percent of South African personnel being women compared to the average of 3.8 percent across other UN peacekeeping missions, yet South Africa also has the highest incidents of SEA for a single TCC in the DRC, relatively speaking.³¹⁸ This demonstrates that while more women in peacekeeping is arguably a good thing for a variety of reasons, the SEA-related assumptions that may lead to their inclusion are not always a reflection of reality or as effective as expected.

In 2014, Alchin, Gouws and Heinecken conducted focus group discussions with women who had been deployed as peacekeepers. The findings of this research revealed that female counterparts of the male peacekeepers who had sexual relationships with local women,

³¹³ Alchin et al., 4; Schoeman, “Foreign Policy and the Military,” 214.

³¹⁴ Pather, “SA deploys more women UN peacekeepers to curb sexual abuse.”

³¹⁵ Lindy Heinecken, “Are Women ‘Really’ Making a Unique Contribution to Peacekeeping? The Rhetoric and the Reality,” *Journal of International Peacekeeping* 19(2015): 229.

³¹⁶ Alchin et al., 4-6.

³¹⁷ Paul D. Williams, “Peace Operations in Africa: Lessons Learned Since 2000,” *Africa Security Brief* 25(2013): 6, <https://africacenter.org/wp-content/uploads/2016/06/ASB25EN-Peace-Operations-in-Africa-Lessons-Learned-Since-2000.pdf>.

³¹⁸ Heinecken, 235; Cold-Ravnskilde and Mandrup, 1-2.

tended to more generally accept these practices.³¹⁹ So accepted were these relationships that one peacekeeper commented: “today he has this girlfriend and tomorrow he has that one”,³²⁰ indicating the casual manner in which these relationships were conducted. Alchin, Gouws and Heinecken additionally commented that it was clear that power dynamics in these relationships were not understood by the peacekeepers.³²¹ These relationships are clear violations of the UN’s zero-tolerance policy. Not only is this conduct prohibited, the women witnessing this are also bound by UN rules to report these relationships; their ability to speak casually about the prohibited relationships of their male counterparts demonstrates that even women do not always adopt and internalise the norms around the appropriate treatment of women.

The assumption that the presence of women can improve the behaviour of their male counterparts also shifts the responsibility for the conduct of men onto women,³²² despite the fact that women in militarised settings have also been accused of participating in SEA including gang rape, and violating standards of appropriate behaviour towards women.³²³ Thus, the presence of women alone is not enough to overhaul such a culture and women must not be held responsible for policing the behaviour of men, nor should their presence be seen as a solution to the misconduct of male personnel.³²⁴

Despite the efforts that South Africa has implemented to demonstrate compliance with the zero-tolerance policy, it is difficult to determine whether these interventions have made a significant difference. In fact, while there has been a general decrease in SEA allegations across the board, UN data suggests that allegations against SANDF personnel are on the rise. Ten allegations were reported against South African personnel in 2018, the most since 2015 when nationality data began being recorded (however only three of these incidents were reported to have actually taken place in 2018, with the rest occurring in previous years.)³²⁵ Of these ten allegations, eight were for sexual exploitation, one for sexual abuse and one for

³¹⁹ Angela Alchin, Amanda Gouws and Lindy Heinecken, “Making a difference in peacekeeping operations: Voices of South African women peacekeepers,” *African Security Review* 27(2018): 7.

³²⁰ Alchin et al., 7.

³²¹ Alchin et al., 7.

³²² Maxi Schoeman, “South African Female Peacekeepers on Mission in Africa: Progress, Challenges and Policy Options for Increased Participation,” Policy Notes 2010/1 (2010): 2.

³²³ Alchin et al., 4.

³²⁴ Cold-Ravnkilde and Mandrup, 4; Heinecken, 235.

³²⁵ “Sexual Exploitation and Abuse,” United Nations Conduct.

both.³²⁶ Given that the majority of allegations against South Africans are for sexual exploitation, the absence of specific policies and practices addressing sexual exploitation is a serious concern. Perhaps the closest thing to sexual exploitation-specific strategy was a suggestion by a Parliamentary committee member that personnel be deployed for significantly shorter periods so that they can spend less time away from their partners, which should in theory decrease the incentive to engage in prohibited sexually exploitative practices.³²⁷ Without commenting on the merit of this suggestion, there is certainly more scope for interventions to address sexual exploitation on its own, given that this is where the majority of South African offenses lie.

Military peacekeepers are drawn from the armed forces of a country and these individuals represent a broad spectrum of society from certain environments. Empirical research conducted by Karim and Beardsley indicated that higher levels of gender equity within the society of a TCC (including high ratios of women in the workforce or girls attending school) can result in lower levels of SEA allegations against its military.³²⁸ South Africa is one of the six TCCs with a significant number of allegations of SEA against its contingents. The other five countries with a significant number of SEA allegations are Morocco, Nepal, Pakistan, Tunisia and Uruguay.

Aside from having higher levels of SEA allegations against their personnel, all six countries also scored poorly on the UNDP's Gender Inequality Index.³²⁹ Despite South Africa's strong legal and institutional support for gender equality, in practice, women are regularly the targets of gender-based violence.³³⁰ High levels of gender-based violence directed at women demonstrates that positive attitudes towards gender equality are not widely embodied in mainstream South African society, and poor levels of gender equity are correlated with higher incidents of SEA. Additionally, sentiments held by men within the SANDF regarding and towards women generally express that women are not welcome. These attitudes may be a

³²⁶ Ibid.

³²⁷ "International Peacekeeping operations," Parliamentary Monitoring Group.

³²⁸ Karim and Beardsley, 109.

³²⁹ Kovatch, 164.

³³⁰ Ibid., 167.

product of communal and familial cultures that do not value women as equals outside of the military, with these dynamics reproduced within military structures.³³¹

Women's empowerment is a slow and multi-stakeholder process and the South African government has taken steps to improve it. South Africa has, through its collaborations with the UN Development Programme, attempted to achieve gender equity and women's empowerment.³³² Gender mainstreaming and transformation programmes for the military have also been implemented although the effects on SEA are questionable. While these may not be intended explicitly to address peacekeeper sexual misconduct, there is evidence that suggests their contributions towards gender equity may impact SEA.

Sexual misconduct by South African personnel can also be considered within the wider scope of the general ill-discipline of SANDF personnel. The roots of the SANDF's poor disciplinary record range from budgetary constraints that result in poor training and human resources limitations, to the process of forming the SANDF by combining the professionalised South African Defence Force and anti-apartheid guerrilla units. These factors have arguably contributed to the lack of a shared military culture and low morale which some argue is responsible for the poor conduct of SANDF personnel.³³³ However, while the government has acknowledged the "serious problem of discipline in the defence force",³³⁴ its SEA-practices do not appear to treat poor conduct and sexual misconduct as symptoms of the same disease. Considerably more public attention has been given to addressing sexual misconduct, as these allegations are inconsistent with South Africa's presented international self-image.

³³¹ Alchin et al., 8.

³³² "Gender Equity and Women's Empowerment," United Nations Development Programme, accessed 3 November 2018,

http://www.za.undp.org/content/south_africa/en/home/ourwork/womenempowerment/in_depth/.

³³³ Neethling, 146; Max du Preez, "SADF vs SANDF – which way to go?" *IOL*, 14 February 2008, <https://www.iol.co.za/news/politics/sadf-vs-sandf-which-way-to-go-389287>.

³³⁴ Neethling, 146; "Sisulu: Serious discipline problem in SANDF," *News24*, 8 September 2009, <https://www.news24.com/SiteElements/HomePage/NewsYouShouldKNOW/Sisulu-Serious-discipline-problem-in-SANDF-20090908>.

5.3. South African Personnel Sexual Misconduct and Norm Internalisation Mechanisms

Norm Internalisation is the culmination of several political processes and dynamics. The UN as an organisational platform serves as a key actor when it comes to diffusing norms and ensuring that they move from the stages of Norm Emergence to Norm Cascade. Thereafter, its role becomes more dynamic depending on the situation.

Concerning peace missions, it is unquestionable that the UN plays a constitutive role in determining what is and is not appropriate. The UN thus plays a key role in determining which norms apply in peace missions. States that choose to participate in these missions must then conduct themselves in a manner that is considered appropriate by the UN; this process is facilitated by legal agreements and the provision of UN conduct standards, of which the zero-tolerance policy is a part. Earlier sections of this study have concluded that normative considerations are one of the five justifications provided in the literature for peace mission participation.³³⁵ However, this does not respond to the key question that this section will address: why and how do states come to embrace the norms that underpin what is considered appropriate behaviour *during* these peace missions?

Gilardi's four mechanisms provide the framework through which Norm Internalisation occurs. The Gilardi analytical framework was utilised to examine the dynamics between South Africa as a TCC and the UN when it comes to addressing sexual misconduct in peace missions. Each of the lenses or mechanisms of this framework was applied in the examination of the relationship between South Africa as a TCC and the UN in this particular context. This process was used to develop a better understanding of the socialisation and internalisation processes and how these do – or do not – translate into behaving appropriately.

5.3.1. Coercion

The first factor that influences how norms are diffused and internalised is coercion. Although peace mission participation is voluntary, and South Africa was initially reluctant to participate during the early post-apartheid years. South Africa has now become one of the

³³⁵ Bellamy and Williams, 6.

major players on the continent when it comes to peace missions.³³⁶ However, when states commit to participate and sign an MOU with the UN, they agree to defer to the UN's authority on a number of issues, the most relevant of which for this study is the conduct of their personnel. One of the primary methods of coercion is through conditionality. This method is not as easy to implement because the UN is dependent on the contributions of member states' personnel and equipment to realise its missions.

The UN has a few methods of coercion that it utilises to encourage compliance with its zero-tolerance policy. This includes withholding the pay of personnel against whom there are SEA allegations and contributing this money to the Trust Fund where applicable. In the event that allegations of sexual misconduct against personnel have been met with state inaction, UNSC S/RES/2272 allows entire contingents to be dismissed. UNSG António Guterres' reluctance to comment on whether he would expel South African personnel in light of UNSC S/RES/2272 is indicative of the political considerations that make coercion a difficult avenue for the UN to pursue.³³⁷

In 2015, the UN began to publish the nationalities of those against whom there were SEA allegations. This practice raised the prospect of being shamed or embarrassed within the international community and consequently also served as a tool of coercion. This tool could be particularly useful where states involved are concerned with their self-image. However, South African SEA interventions predate the UN's decision to publicly disclose the nationalities of alleged perpetrators. It is therefore unlikely that South Africa's actions were influenced by the UN's decision to publish this information. The UN's coercive power is weakened since the TCCs are responsible for training and disciplining their personnel according to UN standards and national legal frameworks, leaving the UN with very little authority.

There are few coercive measures that can be enforced when one party is dependent on the other. Despite the weak coercive powers of the UN, South Africa has complied substantially with UN best practice regarding SEA. For instance, payment is withheld from personnel under investigation and where applicable, they are repatriated. Coercion does not provide adequate explanations regarding the internalisation, or lack thereof, of these norms. If

³³⁶ Schoeman, "Foreign Policy and the Military," 215.

³³⁷ Bryce-Pease, "S Africa addresses sexual abuse by UN peacekeepers."

anything, South Africa demonstrated a desire to address SEA before UNSC S/RES/2272 – arguably the most coercive tool at the UN’s disposal – was passed in 2016.

5.3.2. Competition

Competition is not a significant factor in the diffusion of norms from the UN to South Africa. The context in which Gilardi proposes competition is primarily economic – but this does not mean that competition has no place as an internalisation mechanism among states. The adoption of certain norms can yield non-tangible benefits within the international arena such as acceptance and prestige. It remains difficult to make a case for competition as a means of norm internalisation in the case of peace missions when considering South Africa, especially because competition is understood to be a state-driven mechanism. While competition may play a role in getting some states to adopt certain norms if there are elements of economic interdependence that can facilitate the proliferation of a norm, it does not play a significant role in the norm internalisation process between South Africa and the UN.

5.3.3. Learning

When it comes to learning as a means of norm internalisation, collective actions that declare support for a norm by the UN’s members, like resolutions, are more likely to encourage other states to adopt a norm. This is especially likely if there are real – or perceived – benefits for adopting the norm.³³⁸ It is difficult to argue that there are many explicit benefits for states that choose to adopt norms around the appropriate behaviour towards women in peace missions or prohibitions on sexual misconduct. However, when norms are in the process of being internalised, states that adopt those norms earlier are praised for their efforts or face stigma and disapproval from members of the international community if their behaviour runs counter to the norm.³³⁹

Learning is understood to be a rational process and therefore, for South Africa, it would make sense to comply with the norms and their accompanying institutional frameworks in order to avoid international disapproval and shame and reap any benefits of praise associated with good conduct. Such benefits could include increased deployment, which is a benefit that

³³⁸ Gilardi, 19.

³³⁹ Finnemore and Sikkink, 892.

states like Burundi or Uganda are able to gain materially from through the reimbursement arrangements that generate revenue. However, for South Africa, UN peacekeeping is not a revenue generating exercise. UN reimbursements as agreed to in the MOU are deposited into the national fiscus and not back to the Department of Defence. The National Treasury then redistributes these funds; consequently, the SANDF barely recover all their costs, let alone generate income.³⁴⁰

From 2005 to 2018, nine resolutions have been passed in the UNGA and UNSC regarding the UN's approach to SEA.³⁴¹ Voting on UN resolutions is a political process that involves negotiations and canvassing to ensure that a draft resolution has enough support to pass. Although South Africa was not required to vote for any of the UNGA resolutions as these were adopted without a vote, and South Africa was not a UNSC member when S/RES/2272 was passed, the general support for these resolutions demonstrates that enough states in the international system support combatting SEA. These votes illustrate how learning can take place within an IGO, even though it is a state-driven process. The states adopt norms to fit into the international system and to avoid stigma and condemnation from other states. This relates to Acharya's notion that adoption and acceptance of global norms (for example, those related to human rights) can be related to identity-construction and legitimation.³⁴² The adoption of such strategies by states after they have been observed as utilised by other states, is a demonstration of learning.

Peace mission participation is a means through which South Africa can achieve its foreign policy objectives,³⁴³ as well as secure its place within the community of states from which it was once excluded during its apartheid years. Domestic actors within South Africa use learning to ensure that both of these aims are achieved. South Africa benefits from the praise it receives from its peers and the UN, for declaring support for norms against sexually

³⁴⁰ Mandrup, 137, 139; John Stupart, "Diverted funds put soldiers at risk," *Mail & Guardian*, 30 June 2017, <https://mg.co.za/article/2017-06-30-00-diverted-funds-puts-soldiers-at-risk>.

³⁴¹ "Resolutions," United Nations, accessed 10 November 2018, <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/resolutions>; "Search Results: sexual exploitation and abuse," United Nations Bibliographic Information System, accessed 17 November 2018, <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=15B245703M515.44038&menu=search&aspect=power&np=50&ipp=20&spp=20&profile=voting&ri=1&matchopt=0%7C0&source=~%21horizon&index=.VW&term=sexual+exploitation+and+abuse&x=0&y=0&aspect=power>.

³⁴² Acharya, 247.

³⁴³ Alden and Schoeman, 114; Mandrup, 138; Walter Lotze, Cedric de Coning and Theo Neethling, "Contributor Profile: South Africa," 9 September 2015, 4, <https://s3.amazonaws.com/ipi-pdf-document-store/ppp-profiles/africa/ipi-pub-ppp-South-Africa.pdf>.

exploitative and abusive behaviour by its personnel against women. The UN is also dependent on South Africa's participation to achieve its goals.

However, widely reported allegations of sexual misconduct against South African personnel undermines the praise received for its peacekeeping efforts and opens it up to punishments like those suggested in UNSC S/RES/2272. In 2014, the UN Under-Secretary-General for peacekeeping said of South Africa, Tanzania and Malawi that they, "stepped forward with dedicated, well trained and well equipped units."³⁴⁴ In 2017, South Africa's SEA interventions were included in an annexure on member state best practice by the UNGA along with Bangladesh, Egypt, Congo, Egypt, Gabon, Ghana, Morocco, Togo, Tanzania, Uruguay, Algeria, Argentina, Benin, Canada, Ecuador, Guatemala, India, Malawi, Senegal, Sri Lanka and Vanuatu.³⁴⁵ While South Africa may have a genuine desire to combat SEA, its inclusion in best practice-related commendations also provides other states an opportunity to learn from its example; this, in turn can elicit more international praise and legitimacy as a human rights-forward country. Nevertheless, praise for compliance with a norm is evidence that full internalisation has not been achieved because "highly internalised norms [are] so taken for granted that [they] provoke no reaction whatsoever."³⁴⁶

5.3.4. Emulation

The sections on coercion, competition and learning demonstrate the limited ways in which they can achieve norm internalisation. These processes are driven by inter-state interactions and, according to Gilardi, are most effective when used in economic matters. There is a lack of economic incentives associated with compliance with SEA-related norms for countries like South Africa. This means that other methods of internalisation must be explored. Countries like South Africa are significant contributors of personnel and equipment. This makes it very difficult, at times impossible, for the UN to levy harsh punishments against South Africa and similar countries, given the unique and collaborative nature of the process of peace missions. The reluctance of Guterres to comment on potential repatriation of South African contingents in line with UNSC S/RES/2272, which permits entire contingents to be recalled when there

³⁴⁴ Hervé Ladsous, "New Challenges and Priorities for UN Peacekeeping," The Brookings Institution, 17 June 2014, <https://peacekeeping.un.org/sites/default/files/hl-remarks-brookings.pdf>.

³⁴⁵ United Nations General Assembly, "Special measures for protection from SEA," 28-31.

³⁴⁶ Finnemore and Sikkink, 892.

are SEA allegations against any of its personnel, further compromises the capacity of the UN to act against perpetrators of SEA-related offences.³⁴⁷

While coercion, competition and learning all provide potential explanations for how South Africa could have adopted a certain norm, they do not provide explanations for how norm acceptance translates into the appropriate behaviour that demonstrates internalisation of the norm. This is where emulation as the final mechanism of norm internalisation becomes most relevant. Emulation is driven by what is considered appropriate, as opposed to the threats and incentives that drive coercion, competition and learning as methods of norm internalisation.

During peace missions, the UN determines what is considered appropriate. In this case, the UN has determined that sexually exploitative and abusive behaviour by personnel on its missions is not appropriate. South Africa agreed to behave in a manner consistent with what is deemed appropriate when it signed the MOU. However, agreeing to uphold the zero-tolerance policy does not immediately translate into the appropriate behaviour; behaving accordingly because it is appropriate and not because of the consequences are achieved through socialisation.³⁴⁸

Strategic calculations are influenced by consequences of compliance with a norm. This involves calculations where the anticipated rewards outweigh the costs of complying with a given norm.³⁴⁹ Allegations of sexual misconduct by South Africa's personnel tarnish its international image. As such, strategic calculations that include maintaining a certain self-image, as well as achieving domestic and foreign policy objectives are considerations that have been made. The Peace Mission White Paper outlines strategic considerations related to South African national interest as supporting criteria for international peace mission deployment, nevertheless, considerations are also given to those with whom there is a shared history of struggles against oppression.³⁵⁰ The extent, costs and duration of South Africa's participation in UN, AU and SADC peace missions, as well as the significant investments in complying with the UN's zero-tolerance framework suggest that South Africa is driven by more than a simple cost-benefit analysis.

³⁴⁷ Bryce-Pease, "S Africa addresses sexual abuse by UN peacekeepers,"; Bryce-Pease, "SA troops' deployment in DRC under review."

³⁴⁸ Susan Park, "Socialisation and the liberal order," *International Politics* 51(2014): 339; Checkel, 804.

³⁴⁹ Checkel, 809.

³⁵⁰ Republic of South Africa Department of Foreign Affairs, "Peace Mission White Paper," 3-4.

An instrumental understanding of compliance informs role-playing, where a state follows a norm when it is in its interest to do so.³⁵¹ Concerning peace missions, the appropriate behaviour and role that TCCs like South Africa should play is clearly defined and agreed to by both parties. The delineation of roles in the MOU – a legal agreement – fixes the role of both parties in a peace mission and therefore reduces the need for South Africa to determine its place in the peace mission dynamic, as its role is clearly spelled out in legal agreements. South Africa's early deployments following its initial reluctance can be interpreted as an act of role-playing by assuming a position within the international system that it had already ascribed to.

What determines whether South Africa has adopted role-playing in its interactions with UN peace missions or has internalised the norms and appropriate behaviour defined by the UN is whether it agrees with this behaviour as being appropriate and the right thing to do. Norms surrounding the appropriate behaviour towards women and the prohibition of sexual violence are relatively recent as stand-alone norms. The Rome Statute, to which South Africa is a party, only came into force in 2002 and the UN's zero-tolerance policy began to take shape in 2003. However, as early as 1996, the South African Government's Defence White Paper already demonstrated a human rights-centred approach to security.³⁵² Although it is not mentioned explicitly, SEA arguably constitutes human rights violations.

As discussed in previous sections of this chapter and in chapter 4, South Africa has taken multiple steps to address the SEA committed by its personnel, going beyond what is required. This included introducing pre-deployment vetting systems, pre-emptively repatriating at-risk units, and amending domestic military disciplinary legislation for better alignment with UN policies and values. If this is merely role-play, it certainly demonstrates a commitment to looking the part. In fact, at the state-level, South Africa has undertaken actions that are complementary to the zero-tolerance normative framework prior to its formal creation, suggesting that its behaviour is not solely the product of UN regulations. Nevertheless, the UN's framework and South Africa's obligations to train and discipline its personnel in that arrangement have certainly influenced interventions that are more recent. It is also entirely possible that these interventions are influenced by the prospects of harsher punishments and

³⁵¹ Park, "Socialisation and the liberal order," 339.

³⁵² Shelton, 3.

international shame since the passing of UNSC S/RES/2272 in 2016. On the contrary, behaviour that is initially motivated by consequences can still evolve into being motivated by appropriateness; role-related habits can become internalised and achieve taken-for-granted status. That SEA still occurs does not mean that South Africa has not moved away from role-playing. The fact that the country's achievements still elicit praise within the international system suggests that the UN is attempting to diffuse the norm through institutionalisation and enforce compliance while simultaneously expecting member states to behave as if norms have already been internalised through socialisation.

The literature consulted discusses normative suasion as a means to achieve Norm Internalisation through persuasion and discussion. The configuration of peace missions, the legal complexities, the roles, and the division of responsibilities makes it difficult to reach a stage where persuasion can be used as a tool at the stage that a peace mission is already occurring. This is partly because the UN requires TCCs to agree legally to behave according to a framework. The six resolutions that have been passed in the UNSC and UNGA show the role that persuasion can play. Draft resolutions require negotiation and persuasion to secure enough support to pass – although this is not always the case as some resolutions are adopted without a vote. For example, in September 2018, the UNGA adopted draft resolution document A/72/L.69 on UN actions on SEA without a vote.³⁵³

Yet the persuasion processes involved in resolution lobbying do not always result in the adoption of the logic of appropriateness. States can vote in favour of, or against, a resolution for self-serving purposes or fear of retribution; for instance, in 2018 the United States of America (US) threatened to withdraw foreign aid to countries that did not vote with the US on key political decisions at the UN.³⁵⁴ Such an example demonstrates the difficulty of determining when persuasion results in decisions motivated by normative considerations. This is because the adoption of norms and the processes of persuasion that lead to their adoption is still driven by interests. There is little public information to determine the extent

³⁵³ “General Assembly Adopts Resolution Reaffirming Commitment to Zero-Tolerance Policy on Sexual Exploitation, Abuse throughout United Nations System,” United Nations, 13 September 2018, <https://www.un.org/press/en/2018/ga12050.doc.htm>.

³⁵⁴ Colum Lynch, “Haley: Vote With U.S. at U.N. or We’ll Cut Your Aid,” *Foreign Policy*, 15 March 2018, <https://foreignpolicy.com/2018/03/15/haley-vote-with-u-s-at-u-n-or-well-cut-your-aid/>.

to which South Africa has been persuaded to behave in a manner resulting in norm internalisation in peace missions.

Socialisation processes of norm internalisation demonstrate the interplay between norms and interests. The UN is dependent on TCCs like South Africa's contributions for its peace missions to materialise. Nevertheless, when resources are limited and states have a multitude of intertwined and overlapping interests, peace mission participation can hardly be guided by purely normative justifications. Additionally, the absence of a methodological consensus on how to measure emulation means that it is largely at the discretion of the researcher on a case-by-case basis.

5.4. Conclusion

While the UN takes a hard-line policy stance against sexual misconduct against women by personnel on its missions, in practice, they are unlikely to take any actions that may be perceived as too drastic. For instance, while it is undisputable that South African personnel have problems when it comes to appropriate conduct and discipline, they will likely continue to be a major troop contributor to MONUSCO, especially considering that its mandate was extended for another year in March 2018. The UN's reliance on contributions from member states for peace missions and the nature of the legal arrangements leaves the burden of compliance on the shoulders of the states involved.

Nonetheless, an examination of South Africa's policies and practices demonstrates a commitment to combatting SEA. South Africa has made use of courts-martial in the DRC and has publicly stated that it has recalled several of its personnel as punishment for allegations committed while deployed. South African contingents also already have some of the highest rates of female participation, which is regularly proposed as a viable solution. Notwithstanding the mixed literature and evidence regarding the role that women can play in curbing SEA and encouraging reporting crimes, gender mainstreaming in peacekeeping is still a worthy goal and the UN could incentivise TCCs by introducing quotas where a minimum percentage of women would prioritise the deployment of TCC contingents.³⁵⁵

³⁵⁵ Sanam Naraghi Anderlini, "UN Peacekeepers' Sexual Assault Problem: How to End It Once and for All," *Foreign Affairs*, 9 June 2017, <https://www.foreignaffairs.com/articles/world/2017-06-09/un-peacekeepers-sexual-assault-problem>.

Despite these actions, it is clear that even with the accountability efforts that South African officials have taken, disciplinary action has not served as a sufficient deterrent and more attention must be given to preventing incidents from occurring in the first place.

South Africa subscribes to the relative norms that underpin the zero-tolerance policy as well as larger normative frameworks towards the appropriate treatment of women. This has been achieved through a combination of coercion, competition, learning and emulation. While not all of these mechanisms lead to Norm Internalisation on their own, the socialisation processes associated with emulation have been present to various extents.

Within emulation, the socialisation process of role-playing is the process that is the most likely based on the available information, although this does not mean that strategic calculations and normative suasion have played no roles. In fact, it is difficult to say with confidence where one ends and the other begins. Yet, the combination of the three processes presents an understanding that South Africa, in its post-apartheid configuration, always had an implicit understanding of the wider normative framework within which sexual misconduct-related offences lie. The formalisation and development of the pre-existing understanding was facilitated by the UN's zero-tolerance policy. Some of South Africa's interventions have been acknowledged by the UN as international best practice policies, which presents a foundation upon which South Africa can align itself with international norms to achieve more robust internalisation.

The UN's role as both a site and an agent of socialisation is compromised when it comes to peace missions and consequently the internalisation is complicated. The UN lacks the requisite capacity to effectively use conditionalities or sanctions against South Africa for violating its standards of appropriateness due to its reliance on South Africa's participation. Additionally, the UN's lack of enforcement power when states do transgress the boundaries of appropriate behaviour and the political sensitivities around aggravating resource providers further complicates matters. The unequal distribution of capabilities in peace missions further exacerbates the situation and normative considerations become crucial for compliance.

6. Conclusion: Politics of Norm Internalisation

Sexual exploitation and abuse of women is recognised within the international community as unacceptable both morally and legally. The aim of this study is to explore the main political dynamics that occur when dealing with sexual misconduct perpetrated by United Nations (UN)-affiliated personnel during UN peace missions. South Africa's commitment to the various instruments that seek to reinforce this norm within UN peace missions is evidence of their declared belief in this norm. However, the behaviour of its actors contradicts the apparent commitment to this norm. This study presents an analysis of norm internalisation by South Africa in UN peace missions. This is the case, by analysing by South Africa's norm internalisation in peace missions.

UN peace missions are collaborative endeavours, which require the participation of multiple stakeholders from the UN through the DPKO and its other relevant stakeholders, NGOs, the host country and the TCCs and PCCs that provide the personnel and equipment that operate on the ground. A set of legal agreements, which establish the roles and responsibilities of each party, frame and govern these relationships. These agreements and frameworks are vital to the core functioning of peace missions, and are embedded in the sensitive political dynamics that underpin peace missions. These dynamics are clear when we consider the relationship between the UN and South Africa as a prominent African TCC when it comes to addressing the sexual misconduct of national peace mission personnel.

Sexual violence against women is not new and has been witnessed in several conflicts across the world from Bosnia to the DRC. However, the recognition of sexual violence or exploitative practices against women in conflict and post-conflict environments as inappropriate is relatively recent. The Rome Statute, which only came into effect in 2002, was arguably the first time that norms around the appropriate behaviour of women as women and more than just civilians were institutionalised, with explicit provisions on sexual violence and rape. It is contrary to expectation that while several members of the international community – including South Africa – were affirming their support for norms about the treatment of women, reports of widespread sexual misconduct by UN peace mission personnel were emerging.

The events in the DRC, which were the catalyst for the UN's formal zero-tolerance policy, highlighted the void between international sentiments about the treatment of women and the

reality of how women were treated in conflict and post-conflict environments. However, the division of authority in enforcing the zero-tolerance policy is a product of political compromise because the UN cannot afford to isolate its partners, as it is dependent on their contributions. This weakens the UN's ability to hold states accountable for violating its guidelines of appropriate treatment of women. In the absence of efficient centralised accountability mechanisms, the best way to ensure compliance with the zero-tolerance policy is to encourage internalisation of the norms that form the foundation of the policy.

When considering the zero-tolerance policy and the UN's practices therein, it becomes clear that the focus is on encouraging behavioural changes in line with the norms that dictate what is appropriate. The norm, most simply put, is that it is inappropriate to sexually abuse or exploit women in conflict and post-conflict environments. The reason why the focus is on women is that women are disproportionately affected by conflict and are typically the victims of sexual violence. If we assume that the best way to comply with a policy is to internalise its underlying norms, we must then consider how norms are internalised. The process and methods of norm internalisation – when understood through the framework of Finnemore and Sikkink's Norm Life Cycle – demonstrates that the process is not straight forward, especially when it is complicated by the UN-TCC dynamics. These political dynamics influence the way norms are internalised; therefore, Norm Internalisation should be understood as a political process.

In Chapter 2, Gilardi and Checkel provide methods to understand the mechanisms through which norms can be internalised: coercion, competition, learning and emulation. While all four mechanisms can occur simultaneously, Norm Internalisation is reached primarily through emulation, as emulation shifts the motivation for actions from being driven by consequences to being driven by what is considered appropriate. The UN determines what is considered appropriate behaviour in peace missions, but participating states must engage with the UN to internalise and reproduce that appropriate behaviour. Emulation therefore results in more than a declaration of support for the norm, but also behaviour that is consistent with the underlying norms.

Chapter 3 discussed the evolution of the zero-tolerance policy against the backdrop of the first reports of widespread abuses in the DRC. The first formal element of the zero-tolerance policy was introduced in 2003 with Bulletin ST/SGB/2003/13. This policy evolved with the recommendations of the Zeid Report in 2005, the amendment of the Model MOU in 2007 and

the six SEA-focussed UNGA and UNSC resolutions that were passed between 2003 and 2018. Mission specific interventions were also introduced in MONUC and MONUSCO. It is these documents that collectively form the zero-tolerance policy in which the UN sets out the standards of behaviour that it deems appropriate for all peace mission personnel. What is important with this policy is that all countries that contribute personnel are legally bound to uphold them. The individuals deployed as part of these contingents also commit to abide by the appropriate behaviour and receive SEA-focussed pre-deployment training.

Even with the comprehensive framework within which South Africa as a TCC has committed to operate, its personnel have on numerous occasions been accused of SEA. The allegations against South African personnel and the concomitant government policies to address this issue are discussed in Chapter 4. It is a great concern that there is currently no domestic framework with explicit SEA provisions, although that is under development with the Military Disciplinary Bill. Although the Military Disciplinary Bill has not yet been passed, it presents opportunities for future research to evaluate the impact of more comprehensive domestic disciplinary policies with explicit SEA provisions. Despite South Africa's reputation of having poorly disciplined personnel, it continues to declare its support for the norms that guide the zero-tolerance policy and there is evidence to suggest that it has supported these norms – at least on paper – even before the zero-tolerance policy was formalised. This is where the primary focus of this research lies: exploring the main political dynamics that occur when dealing with sexual misconduct perpetrated by UN peace mission personnel through an examination of the underlying norms.

Chapter 5 provides the key normative analysis of the practices undertaken by South Africa in addressing the sexual misconduct of its personnel. This analysis tracks South Africa's practices against the four methods of norm internalisation, while considering the role that the UN-South Africa relationship plays in each step.

If one considers the extent of the practices that have been implemented by South Africa, it would be difficult to argue that it has not adopted the norms regarding the appropriate treatment of women in conflict and post-conflict environments. This is despite its acknowledged domestic challenges with high levels of gender-based violence against women. While this goes beyond the scope of this research, it presents opportunities for further research on the relationship between domestic attitudes towards sexual violence against women and South African peacekeeper sexual misconduct. The reasons for adopting these

norms need not be altruistic, nor are they. South Africa's adoption of international norms that have a human rights component cannot be divorced from its pursuit of international legitimacy and international identity-construction in the mid-1990s after the end of apartheid. However, subscribing to the norm and behaving in accordance with it do not necessarily need to have the same motivations.

Coercive measures, while used in a limited fashion by the UN, have not proved an effective way to enforce compliance or accelerate Norm Internalisation. This is due to the UN's dependence on troop and equipment contributions. The literature is clear that South Africa's personnel have been accused of sexual misconduct on numerous occasions despite efforts by the country to minimise their occurrence and seek rapid accountability where possible through courts-martial. Yet, South Africa is likely to remain a major TCC for MONUSCO due to its general troop and FIB contributions as well as its political history in the DRC. The scope for competition and learning concerning appropriate behaviour in peace missions is also limited, especially as these processes are primarily driven by interstate interactions and relationships.

Norm Internalisation is characterised by 'taken-for-granted' status and an understanding that something is the right thing to do. The focus on accountability after-the-fact therefore does little to change the behaviour of deployed personnel in order to prevent such incidents from occurring in the first place.

However, the continued existence of SEA allegations against South African personnel does not negate interventions made by the state to address SEA, especially when there are attempts to hold perpetrators accountable. To simplify, a person who steals does not contradict the normative (and legal) provisions that stealing is wrong. If this person is prosecuted and incarcerated accordingly, the punishment reinforces the state's conviction that stealing is wrong and those who steal should be punished. The challenge is to get people to a point where they understand and accept – or internalise – that theft is wrong. Although this illustration is oversimplified, it represents the same conundrum faced by South Africa on its journey towards Norm Internalisation. Socialisation through strategic calculations, role-playing or normative suasion provide the best available answers on how to achieve internalisation that results in sustained behavioural change. It is, however, difficult to pinpoint exactly when states have been socialised into adopting the logic of appropriateness

and behaving in a manner motivated by what is appropriate as opposed to what is not with concomitant consequences.

South Africa's policies and practices regarding SEA by its personnel deployed in the UN's DRC mission, it can best be understood as role-playing. The UN as both the site and agent of socialisation prescribes what is considered appropriate and plays a role in state identity-formation by giving states a platform from which they can mould their international identities in their multilateral interactions. South Africa's identity, although not always clear, is largely informed by distancing the country from its apartheid history and international pariah status. By demonstrating a commitment in both policy and practice to addressing SEA, South Africa behaves in a manner that is consistent with the role it is required to play as a TCC in a UN peace mission. This behaviour includes investigating and court-martialling those accused of SEA as well as engaging in best-practice activities like pre-deployment vetting and proactive repatriation. Even though the UN has limited enforcement authority, the incentive for South Africa to comply with UN recommendations on SEA are informed by its role as a major TCC and its commitment to international best practice in its international peace mission participation.

There is enough evidence to support the perception that South Africa is on a socialisation journey that may turn its current role-playing activities into unquestioned habits, for example, by amending its domestic legislation on military discipline to promote greater alignment with UN conduct provisions. South Africa's attempts demonstrate that the political dynamics between the UN and TCCs in peace missions requires both actors to participate in the process, as neither actor can control the other. Limited resources and restrictive legal obligations mean that South Africa must subscribe to the norms around protecting women, internalise them, and behave accordingly, for the dynamic with the UN to be fruitful.

However, the lack of definitive or objective criteria with which to determine when taken-for-granted status has implications for future research on Norm Internalisation. Additionally, this study demonstrates that there are several opportunities for continued research on the topic of Norm Internalisation and peacekeeper sexual misconduct. More data on the prevalence on SEA, combined with a normative analytical approach, can be used to evaluate current interventions and redesign pre-deployment training, or amend the zero-tolerance policy if necessary. By placing the norms around the appropriate treatment of women at the centre of

academic study and policy, interventions that focus on the dignity of the victims as well as accountability for perpetrators can be developed.

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