The Legal Vacuum in United Nations Peacekeeping Missions: The Contribution of the 'Effective Control' Test to State Accountability in Peacekeeping

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Abstract: United Nations peacekeeping missions are increasingly criticised for their failures to protect civilians and even for human rights abuses by peacekeepers. The victims of this misconduct have been trying to get reparation in court by holding the UN legally accountable. However, with the UN being protected by its immunity, they have started turning to the State as an alternative legal avenue. The academic debate has followed this turn of events by asking if and how a troop-contributing country (TCC) should be held accountable in court. Scholars are arguing in favour of applying the 'effective control' test to reach attribution to the State. This thesis will, therefore, aim to answer the question: *In what ways can the 'effective control' test contribute to State accountability in peacekeeping?* It will do so by applying a qualitative, legal doctrinal approach to a case study: the fall of Srebrenica (1995). The Srebrenica cases (2008-2019), which ensued from this instance of peacekeeping failure, provide insights into the contribution of the 'effective control' test to peacekeeping accountability. This thesis will conclude that the 'effective control' test according to the preventive interpretation, based on Article 7 ARIO, allows for a wide attribution to the State and thus State accountability in peacekeeping.

Keywords: *peacekeeping accountability, State accountability, the 'effective control' test, the fall of Srebrenica*

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1. Introduction

Peacekeeping missions are established by the United Nations (UN) as a tool to maintain peace and security (Faruk Direk, 2014, p. 2). One of their most important objectives is the protection of civilians during conflict (peacekeeping.un.org). However, with failures to do exactly that and even reports of human rights abuses against civilians by peacekeepers, these missions have come under debate. The international community is faced with the dilemma of how to hold an international organization (IO) accountable when it is acting on behalf of the whole community. One part of this debate is the reparation for victims of peacekeeping failure and misconduct. These victims have been trying to hold the UN legally accountable in court. However, with the UN enjoying immunity from any litigation in court, this legal avenue soon proved to be futile. Recently, victims have started turning to national courts in the hope of holding troop-contributing countries (TCCs) legally accountable instead.

The academic debate has followed this turn of events by asking if and how a TCC should be held accountable. This has resulted in the development of the principle of dual attribution, which allows both the UN and the TCC to incur responsibility for the same mission. In order to determine attribution of conduct to either the UN or the TCC, scholars have been arguing for the application of the 'effective control' test. However, within the 'effective control' doctrine, there is disagreement about how the test should be applied. In this respect, a presumptive and preventive interpretation can be identified.

Until recently, the 'effective control' test did not produce the promised results. None of the cases brought against TCCs resulted in attribution to the State. This changed with the Srebrenica cases (2008-2019) in the Dutch courts, which constitute the first-ever cases where a TCC was held accountable through the 'effective control' test. These cases, therefore, provide an empirical opportunity to test the premises of the 'effective control' test. They will give insights into how the 'effective control' test needs to be applied to reach accountability of the State in peacekeeping. This thesis will therefore aim to answer the following research question:

> *In what ways can the 'effective control' test contribute to State accountability in peacekeeping?*

First, the current state of the debate in academic literature will be discussed. Secondly, the relevant positive legal standards and jurisprudence in international responsibility will be identified. Thirdly, the research methodology will be shortly discussed. And finally, to answer

the research question, the case study of the fall of Srebrenica (July 1995) will be analysed and conclusions will be drawn on the contribution of the 'effective control' test in improving peacekeeping accountability.

2. Literature Review

According to the UN, peacekeeping missions are formally established as organs of the UN. It therefore also maintains that "an act of a peacekeeping force is, in principle, imputable to the Organization" (UN Secretariat, 2004, p. 28). This would mean that when peacekeeping results in misconduct, the UN could theoretically be held responsible in court. However, with the UN enjoying immunity before all international and domestic courts, victims of peacekeeping misconduct had nowhere to turn for reparation. Recently, these victims have started turning to the State as a potential alternative legal avenue. They have started seeking reparation in national courts by holding the TCC legally accountable for its conduct during peacekeeping missions (Morris, 2021, pp. 25-26). The academic debate has reflected this turn of events by asking (1) if the State should be held accountable, and (2) how this can be achieved.

2.1 The State as an alternative legal avenue

Although TCCs carry out missions in the name of the international community, scholars are increasingly arguing that this does not take away from their legal responsibility under international law. The arguments in this respect are twofold. Firstly, the "closely-knit yet separable spheres of control, competence and decision-making" in peacekeeping missions should also be reflected by sharing legal responsibility between the parties (Krieger, 2015, p. 270). Morris (2021) argues that peacekeeping missions never happen as scripted by the UN and that the 'operational control' it claims to have cannot be sustained throughout the whole operation. In fact, it is inherent to the chain of command in peacekeeping operations that control is shared among parties, and thus joint responsibility should be established (pp. 11-12). In other words, control over peacekeeping missions is always shared between different parties and these parties should therefore all be held accountable.

Secondly, it is argued that developments in international law suggest that the formal status of a peacekeeping mission does not take away from the legal responsibility of the State therein. The development of the principle of due diligence suggests that States do not only have to abide by international human rights law, but also have to play an active role in preventing abuses (Dannenbaum, 2015a, p. 202). Therefore, when States are exerting control

over their troops, they have legal obligations toward the individuals under their jurisdiction (Morris, 2021, p. 3).

However, proponents argue that holding TCCs responsible for peacekeeping missions could have dangerous institutional effects. Firstly, it could lead to the disintegration of peacekeeping missions. If TCCs become responsible for conduct over which they do not have full authority, they might try to seek such authority which will result in the loss of the UN oversight (Okada, 2019, p. 282). Secondly, it could damage the viability of future missions as states might refuse to contribute troops. Since the UN is still protected by its immunity, TCCs will be the only ones incurring responsibility for missions that they perform in name of the international community (Krieger, 2015, p. 269). Despite these political objections, a tendency can be observed where domestic and regional courts are willing to take on cases of peacekeeping accountability (p. 267). This consequently raises the question of, on what legal grounds attribution to the State could be achieved.

2.2 The legal ground for attribution: The 'effective control' test

Domestic courts need a legal ground for attribution to attribute conduct to the State. The legal sphere of international responsibility is governed by the Draft Articles, published by the International Law Commission (ILC). The ILC is tasked with the identification and codification of international customary law and can be considered the legal authority in this respect (Dannenbaum, 2015b, p. 404). It has published the Draft Articles on the Responsibility of States (ARS) (2001) and the Responsibility of International Organisations (ARIO) (2011)[1]. However, the ARS and ARIO are by no means exhaustive and give rise to multiple interpretations when applied to the context of peacekeeping.

In the earlier literature on peacekeeping accountability, a formalistic interpretation was predominant. According to the UN institutional law, peacekeeping missions are formally established as organs of the UN, not the TCC (UN Secretariat, 2004, p. 28). Therefore, formalistic scholars argue that attribution should happen exclusively to the UN (Sari, 2012, p. 80). However, because of UN immunity, this has prevented any type of accountability[2].

To fill this accountability gap, scholars have started exploring other grounds for attribution. According to customary principles of international law, a State can also incur responsibility for conduct that was performed by a non-State entity (Nicaragua v. United

[1] The Draft Articles on the Responsibility of International Organizations (ARIO) (2011) and the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARS) (2001) will be discussed in-depth in the normative framework.

[2] See for instance *Behrami v. France* (2007) and *Saramati v. France, Germany and Norway* (2007).

States). In this respect, the ‘effective control’ test was developed. The ‘effective control’ test is a standard of attribution whereby conduct can be attributed to a State if that State fulfils the requirements of ‘effective control’[3] (Krieger, 2015, p. 269). Because of the ambiguous status of peacekeeping missions, scholars have been advocating for the application of the test to peacekeeping as well.

Faruk Direk (2014) argues that since it can be said that peacekeeping forces are organs of both the UN and the TCC, it is impossible and unnecessary to determine ownership. Rather, the legal framework of the 'effective control' test, central to article 7 ARIO, can function to establish dual attribution (pp. 12-13). Effective control comes in degrees, which provides the basis for the responsibility of a plurality of actors (pp. 13-14). Krieger (2015) makes a similar argument and asserts that "an approach based on effective control gives room for more nuanced forms of attribution than the more formal approach based on the status of an organ" (p. 269). For example, the State might be responsible for specific conduct on the ground, while the UN might incur responsibility for the planning of the mission (Krieger, 2015, pp. 270-271). The approach based on the ‘effective control’ test, has been termed a bifocal conduct-specific approach (Dannenbaum, 2015b, p. 413). To sum up, the 'effective control' test should be used to determine control over specific conduct. 'Effective control' comes in different degrees and the parties will incur responsibility corresponding to their degree of control.

Until recently, the results of the ‘effective control’ test in the context of peacekeeping proved disappointing. Despite the multiple court cases brought against TCCs, not one was ever held accountable for its conduct in peacekeeping. This changed with the Srebrenica cases in the Dutch courts, where peacekeeping misconduct was attributed to a TCC for the first time ever (Morris, 2021, pp. 3-4). This raises questions about why the Dutch courts did succeed in reaching attribution and in what way they applied the ‘effective control’ test. These cases, therefore, provide empirical insights that can contribute to the future doctrinal debate. Consequently, this thesis will aim to answer the question: *In what ways can the ‘effective control’ test contribute to State accountability in peacekeeping*

[3] The requirements of the ‘effective control’ test will be discussed in-depth in the normative framework.

3. Conceptual framework

In order to answer the research question, the concepts 'effective control' and State accountability need to be defined more explicitly.

3.1 Interpretation of 'effective control': presumptive vs. preventive

Within the 'effective control' doctrine, there is disagreement about how the test should be interpreted and applied. In the literature, two major interpretations can be identified: the presumptive and preventive approach. The presumptive approach consists of two legal steps: presumption and rebuttal. It is presumed that peacekeeping forces are in principle under the control of the UN, but this assumption can be rebutted for the conduct where the TCC is in 'effective control' (Okada, 2019, pp. 276-277). Effectively, all conduct is attributed to the UN, unless it can be proven in court that the TCC had 'effective control' over certain conduct. This also means that *ultra vires* acts, as long as they are not ordered by the State, fall under the responsibility of the UN (pp. 282-283).

The preventive approach, on the other hand, interprets 'effective control' as having the 'power to prevent' (Okada, 2019, p. 283). Dannenbaum (2015a), the initiator of this approach, argues that "wrongs ought to be attributed to the participant states or organisations that hold the levers of control most relevant to preventing the type of wrongdoing in question" (p. 193). For instance, in preventing *ultra vires* acts by individual peacekeepers, the TCC holds the relevant levers of control (Dannenbaum as cited in Okada, 2019, pp. 284-285). Therefore, for every instance of misconduct, it should be assessed who had 'effective control' over preventing it. The levers of control "include not just the authority to direct, but also authority over training, discipline, hiring, promotion, criminal jurisdiction, and more" (Dannenbaum, 2015a, p. 200).

The arguments for and against these interpretations run in line with those brought forward in the context of turning to the State as an alternative legal avenue. The preventive interpretation attributes a wider range of conduct to the State than the presumptive interpretation and is thus argued to potentially create dangerous institutional effects. From the viewpoint of accountability, however, the preventive approach is expected to produce better results. This thesis will be guided by both interpretations, to examine 'in what ways' the 'effective control' test contributes to accountability in practice.

3.2 State accountability

For the purpose of this thesis, State accountability shall mean legal accountability. International legal accountability involves assigning ownership of conduct to an actor and "the assessment or judgement of that performance against international legal standards" (Brunnée, 2007, p. 4). In other words, two legal steps need to be fulfilled to construe legal accountability: (1) attribution, and (2) wrongfulness. Therefore, TCCs and the UN can be held accountable if peacekeeping conduct is attributable to them and if that conduct is wrongful under the relevant legal standards.

Since this thesis is assessing the contribution of the 'effective control' test, which is a standard for attribution, the subsequent parts will mainly focus on the step of attribution. Wrongfulness will only be marginally discussed. The accountability debate transpired because wrongful conduct under international legal standards did not lead to attribution and thus accountability. Therefore, the wrongfulness of the conduct is not under debate here.

4. Normative Framework

In order to evaluate the contribution of the 'effective control' test, the current legal landscape upon which it builds needs to be laid out first. The relevant legal standards and corresponding jurisprudence will be identified.

4.1 Attribution to the State

As the main international actor, a State has legal personality and therefore also responsibilities under international law (art. 2 ARS). The ARS, considered a codification of customary law (Cassese, 2007, p. 650), governs the possible means of attribution. The most straightforward way of attribution to the State is when acts are performed by an organ of that State (art. 4 ARS). However, it remains undetermined if peacekeeping missions are organs of the State or the UN. Therefore, it has been accepted that in the context of peacekeeping missions Article 4 ARS cannot provide the basis for attribution of misconduct to the TCC (ILC, 2011a, p. 56).

However, under international law States might also incur responsibility for conduct that was performed by an entity that is not an organ of the State. The 'effective control' test was advanced in this context. It was firstly developed by the International Court of Justice (ICJ) in the *Nicaragua* case of 1986. The case concerned the responsibility of the United States for human rights violations committed by a private entity, that was however trained, armed, and financed by the US (Barsac & Samson, 2018, p. 285). The ICJ ruled that for the US to incur responsibility for the violations, the US would have to exert 'effective control'

over the misconduct in question. 'Effective control' was intended by the ICJ to mean that the violations were "directed or enforced" by the US (Nicaragua, par. 115). With this case, the ICJ established a rigid test with a high threshold for incurring responsibility (Cassese, 2007, p. 654). The test was criticized for being "too demanding" by scholars (Barsac & Samson, 2018, p. 287), and the International Criminal Tribunal for the former Yugoslavia (ICTY) even tried to expand the rigid test in the *Tadić* case (1999). Additionally, the test was criticized for not being built upon any pre-existing legal standards (Barsac & Samson, 2018, p. 286). Nevertheless, it was soon embraced and codified by the ILC (ILC, 2001, p. 47). The 'effective control' test was codified in article 8 ARS, and became a basis on which conduct could be attributed to a State:

> *The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.*

However, the ILC never explicitly clarified the degree of control needed to establish 'effective control' and thus attribution to the State, as it never expressed favour towards either *Nicaragua* or *Tadić* (Barsac & Samson, p. 286). Nevertheless, the ICJ rejected the *Tadić* test in its *Bosnian Genocide* case (2007) and reinforced the high threshold.

Ever since the 'effective control' test has been applied to the context of peacekeeping, this high threshold has prevented courts from attributing misconduct to TCCs. In cases such as *Al-Jedda v. UK* (2007 & 2011), courts applied the 'effective control' test but were unable to attribute misconduct to the TCC. Because of this, scholars have been advocating for the application of Article 7 ARIO to not only the UN, but also to the State. Article 7 ARIO will be discussed further below.

4.2 Attribution to the United Nations

Under international law, the UN is considered to have legal personality (Reparation for Injuries, 1949), and is therefore responsible for its conduct in peacekeeping missions. However, for a long time, the legal standards for attribution to IOs were unwritten and contested. In 2011, the ILC codified what it deemed the relevant customary rules in the ARIO. However, the customary nature, and therefore the binding nature of the ARIO remain

debated. Nevertheless, the ARIO is increasingly cited by international courts, and this thesis will therefore consider it to contain the relevant legal standards.

The most straightforward way of attribution to an IO is when acts are performed by the organs of that IO (art. 6 ARIO). As mentioned before, the UN itself considers peacekeeping missions as organs of the organization (UN Secretariat, 2004, p. 28). However, the ILC and scholars alike have rejected the application of Article 6 to peacekeeping, as peacekeeping missions still act to a certain extent as an organ of the State (ILC, 2011a, p. 56)

Instead, Article 7 accounts for seconded organs that never fully become organs of international organizations (p. 56). For this purpose, Article 7 provides a basis on which conduct can be attributed to an IO:

> *The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.*

The ILC emphasizes in its commentary that the 'effective control' criterium in Article 7 needs to be based on factual criteria. The UN's claim of exclusive command and control is therefore not enough to establish 'effective control' as the facts of the case need to be examined for attribution to the UN (ILC, 2011a, p. 58). Article 7 is by most scholars considered the appropriate legal basis for attribution of peacekeeping misconduct to the UN.

However, the application of Article 7 to the UN has been non-existent because of the UN's jurisdictional immunity before all international and domestic courts. This means that even though Article 7 provides a basis for attribution, it will not lead to accountability for victims. UN immunity can be found in numerous sources such as Article 105 of the UN Charter, and the *1946 Convention on the Privileges and Immunities of the United Nations*. In the case of peacekeeping missions specifically, the immunity of the missions is laid down in the *Status of Force Agreement* (SOFA, art. 15) which is signed by the UN and TCCs at the start of each mission. UN immunity has been criticised for its tension with the right to a fair trial, but so far no domestic nor international court has been willing to strip the UN of its immunity, not even in the case of breach of *ius cogens* norms[4]. Therefore, attribution to the UN remains theoretical until UN reform might be realized.

[4] See for instance Behrami v. France (2007) and Jurisdictional Immunities (2012).

However, scholars are increasingly arguing for applying Article 7 ARIO as a ground for attribution to States as well. This conviction seems to be supported by the ILC. "The criterion for attribution of conduct either to the contributing State or organization or to the receiving organization is based, according to article 7, on the factual control that is exercised over the specific conduct taken by the organ or agent placed at the receiving organization's disposal" (ILC, 2011a, p. 57). Therefore, conduct will be attributed to either the UN or the State, based on who had 'effective control' according to the requirement of Article 7 ARIO.

4.3 Wrongfulness of conduct

States and IOs can be held responsible for any type of conduct that breaks one of their international obligations. In most peacekeeping cases, it will involve a breach of international human rights law or international humanitarian law. However, it is also possible to incur legal responsibility under the national law of the country the peacekeeping mission is executed in. Therefore, if the conduct can be attributed to the UN or a TCC, and that conduct is wrongful under national or international law, they can in theory be held responsible. The wrongfulness of the conduct in this thesis will be discussed marginally alongside the analysis.

4.4 Theoretical expectations

Flowing from this discussion, this thesis will be guided by the expectation that the application of the 'effective control' test will improve accountability in cases of attribution to the State. Especially in the case where Article 7 ARIO is applied, since this legal ground has a lower threshold than Article 8 ARS. The scholarly literature discussed also creates the expectation that the preventive approach will provide greater accountability than the presumptive approach. However, it is anticipated that the 'effective control' test would not lead to attribution to the UN, as long as its immunity is still in place. The development of the test in case law would however create a precedent for dual attribution so that when the time comes, a proper test will be in place to determine who is responsible for what.

5. Research Methodology

5.1 Research design

This thesis will provide a qualitative, exploratory study of the contribution of the 'effective control' test in improving peacekeeping accountability. A combination of a legal doctrinal approach and more empirical methods will be used. It will be explored how the positive legal standards identified in the normative framework are empirically implemented

by the relevant courts, and if and how they do lead to greater accountability in practice. This will be done through an in-depth case study of the fall of Srebrenica.

Both primary data in the form of court judgements and secondary data in the form of responses and criticism on those court judgements by scholars and commentators will be analysed. The development in case law will be studied to draw conclusions on the prospects of the 'effective control' test.

5.2 Case selection

The case study selected is the fall of Srebrenica (1995). This case represents a deviant/exceptional case since its judgements are the first-ever instances where a TCC has been held accountable (Morris, 2021, pp. 3-4). All three cases about the misconduct in Srebrenica, *Nuhanović*, *Mustafić,* and *Mothers of Srebrenica*, have been appealed up to the Supreme Court. In all these court cases, the 'effective control' test has been applied, which has led to attribution for the first time. Therefore, this case study will provide important insights into how the 'effective control' test leads to attribution and therefore accountability in peacekeeping.

6. Analysis

6.1 Introduction to the case

With the collapse of the Republic of Yugoslavia in the 1990s, several regions of the Republic declared themselves independent. After the independence of Slovenia and Croatia, a bloody civil war broke out between different population groups. As a response, the United Nations send the United Nations Protection Force (UNPROFOR) to help with peace negotiations. When Bosnia-Herzegovina also declared itself independent in 1992, fighting broke out there between Bosnian-Serbs (VRS), Muslim militias, and the army of Bosnia-Herzegovina (ABiH). Shortly after, the mandate of UNPROFOR was extended to Bosnia-Herzegovina (Mothers of Srebrenica, 2014, par. 2.1-2.4).

The war resulted in a flow of Muslim refugees, who found a temporary safe haven in the enclave of Srebrenica. After demilitarisation negotiations between VRS and ABiH, led by UNPROFOR, Srebrenica was declared a *safe area* in 1993 (par. 2.10). The Dutch government then put a battalion ("Dutchbat") at the disposal of UNPROFOR to protect the *safe area.* The headquarters of Dutchbat were at a compound in Potočari, five kilometres away from Srebrenica (par. 2.14-2.16). In July 1995, the Bosnian-Serbs started to attack the *safe area*, and the town of Srebrenica fell on July 11th. This resulted in a stream of refugees towards the

compound in Potočari. About 5000 refugees were housed inside the compound and an additional 20,000 had to stay outside (par. 2.34-2.35).

On the evening of July 11th, Dutchbat entered into negotiations with Mladić, the leader of the Bosnian-Serb Army, about a potential ceasefire and the evacuation of the refugees. An agreement was reached about the Bosnian-Serbs arranging transportation for the refugees and Dutchbat and associated personnel evacuating at a later time (par. 2.40). In the afternoon of July 12th, busses arrived and the evacuation of the refugees commenced. During the evacuation, the able-bodied men were separated from the other refugees, according to the Bosnian-Serbs to screen for war criminals (par. 2.40). However, on the 13th of July, reports started coming in of violence against and even the execution of the men. Despite this, the evacuation continued with the collaboration of Dutchbat (par. 3.2.1). Later it was discovered that more than 7000 Muslim men had been killed in mass executions after they had been taken away from the compound (par. 2.43).

Multiple cases have been brought before the Dutch courts by surviving relatives of the Genocide in Srebrenica. In the Netherlands, the court of first instance is the District Court of the Hague. Both parties can appeal the judgement of the District Court at the Court of Appeal. Finally, both parties can make one less appeal to the Supreme Court of the Netherlands. However, the Supreme Court is not allowed to review the facts of the case, only the proper application of the legal standards (rechtspraak.nl).

6.2 Nuhanović & Mustafić

Nuhanović and *Mustafić* mark the first cases where the Dutch State was taken to court for its conduct during the fall of Srebrenica. The courts opted to treat the cases in parallel since the facts of the case are nearly identical (Nollkaemper, 2011, p. 1144). Both cases concern refugee families that were sent away from the compound during the evacuation, which resulted in their deaths.

The *Nuhanović* case was brought by Hasan Nuhanović, the only one in his family surviving the genocide in Srebrenica. He sought refuge at the compound together with his family members: Ibro (father), Nasiha (mother), and Muhamed (minor brother). Hasan was working as an interpreter for UNPROFOR, and was therefore in the possession of a UN-pass and would be evacuated together with Dutchbat at a later time. His family members were not in the possession of such a UN-pass (Nuhanović, 2011, par. 2.28). Despite attempts of Hasan to get his family members on the Dutchbat evacuation list, they were sent away from the

compound on the evening of 13 July 1995. Shortly after, all three of them were executed by the Bosnian Serb Army (par. 2.29).

The *Mustafić* case was brought by the surviving relatives of Rizo Mustafić who had been working as an electrician for Dutchbat since 1994. The Mustafić family also sought refuge at the compound (Mustafić, 2011, par. 2.28). Despite being part of the local personnel, Rizo was not employed by the UN and was therefore not in the possession of a UN-pass. The whole family was made to leave on the evening of 13 July 1995, and outside the gate of the compound, Rizo was separated from his wife and children. Shortly after, Rizo was executed by the Bosnian Serb Army. The rest of the family survived (par. 2.29).

Both Nuhanović and Mustafić et. al claimed that the Dutch State was liable for acting wrongfully towards their family members, by sending them away from the compound on the evening of July 13th and denying them protection by placing them on the evacuation list (Nuhanović, 2008, par. 3.2.1). This was done despite reports that Dutchbat received about the crimes that were being committed against the able-bodied male refugees (par. 2.27).

6.2.1 District Court of the Hague (2008)

In first instance, the District Court denied the claim. Despite the plaintiffs arguing that "any liability of the United Nations under international law does not detract from the State's own liability" (par. 3.2.1), it was exactly on this ground that the claim was rejected. The District Court argued primarily that the conduct of Dutchbat was not attributable to the Dutch State (par. 4.7). It based its judgement on Article 6 of the ARS: "The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed". The court argues that, "by means of analogy" Dutchbat is made available to the UN like it would be made available to another State (par. 4.8). Therefore, the District Court rules that the conduct of Dutchbat is attributed exclusively to the UN (par. 4.11). Only if the Dutch State would have contravened UN orders, would State liability be involved. The court concludes that this is not the case (par. 4.14.1-4.14.5). Since the District Court has no jurisdiction over the UN, it never arrives at the secondary question if the conduct of Dutchbat was wrongful.

In this first instance, the 'effective control' test was not applied by the District Court. The result is exclusive attribution to the UN, and since the UN has immunity the result is no accountability whatsoever. It must be mentioned here that the ARIO had not yet been published by the ILC, and the District Court therefore had to rely on the ARS and the fuzzy

unwritten rules surrounding the responsibility of IOs. However, the way the court deals with the rules of attribution is deemed controversial because it is not based on previous legal practice (Higgins, 2014, p. 646).

6.2.2 Court of Appeal (2011)

Nuhanović and *Mustafić* appealed the judgement of the District Court on multiple grounds, but most importantly the criterium for attribution. According to the plaintiffs, the correct ground for attribution should be 'effective control' and the Court of Appeal agrees (par. 5.8). Relying on a preliminary version of the ARIO, the court identifies Article 6 ARIO (which is Article 7 in the published version), as the relevant legal ground for attribution (Higgins, 2014, p. 649).

The Court of Appeal also accepts the possibility that more than one party can have 'effective control' over the conduct (par. 5.9). The court argues that "significance should be given to the question whether that conduct constituted the execution of a specific instruction, issued by the UN or the State" but also whether " if there was no such instruction, the UN or the State had the power to prevent the conduct concerned" (par. 5.9). The court, therefore, premised the 'effective control' test on two dimensions: (1) theoretical control, and (2) factual control.

Theoretical control refers to the legal power over Dutchbat and thus the authority to give orders (Nollkaemper, 2011, p. 1149). The formal command normally lies with the UN. However, since "the mission to protect Srebrenica had failed" the conduct happened in the context of a transition period in which the Dutch State had more authority than it normally would have and "participated in that decision-making at the highest-level" (par. 5.11-5.12). The Dutch State thus had the legal power to issue orders and therefore prevent the conduct.

Factual control refers to when the State exercises *de facto* control, as opposed to formal authority, over the conduct in question (Higgins, 2014, pp. 650-651). This includes the discretion the Dutch State is given to decide how to carry out UN orders, but also occurs when the Dutch State contravenes UN orders. The Court of Appeal concluded that the Dutch State also had factual control over the conduct: "the allegation that Dutchbat sent Nuhanović/Mustafić away from the compound is related to the manner in which the evacuation of the refugees was *carried out*" (emphasis added) (par. 5.19). In other words, the Dutch State had control over the way the evacuation was carried out, which resulted in the death of Nuhanović and Mustafić.

Fulfilling both theoretical and factual control, the court concluded that the Dutch State exercised 'effective control' over the conduct of Dutchbat and that this conduct could

therefore be attributed to the State (par. 5.20). However, the court implies that factual control on its own would have been enough to establish 'effective control' (Nollkaemper, 2011, p. 1151). The court then goes assessing if the conduct was wrongful and answers this in the positive based on Bosnian national law and principles of international law (right to life and prohibition of inhuman treatment) (par. 6.1-6.20).

What can be seen here is the Court of Appeal applying a bifocal-conduct specific approach, centred around the 'effective control' test. Additionally, the Court of Appeal embraces the preventive approach as proposed by Dannenbaum, and even cites his work. The court deems it relevant whether " if there was no such instruction, the UN or the State had the *power to prevent* the conduct concerned" (emphasis added) (par. 5.9), and concludes that "In the opinion of the Court is it beyond doubt that the Dutch Government was closely involved in the evacuation and the preparation thereof, and that *it would have had the power to prevent* the alleged conduct (…)" (emphasis added) (par. 5.18).

6.2.3 Supreme Court of the Netherlands (2013)

The Dutch State appealed the judgement before the Supreme Court, on the ground that the Court of Appeal applied a faulty criterium for attribution (par. 3.6.1). According to the State, attribution of peacekeeping missions should be done based on Article 6 ARIO, and conduct should therefore be attributed exclusively to the UN (par. 3.10.1). The Supreme Court rejected this argument and upheld the judgement of the Court of Appeal (par. 3.10.2). This judgement came after the publication of the ARIO and the Supreme Court was, therefore, able to rely on other articles as well to interpret the 'effective control' test. The Supreme Court concludes that the Court of Appeal rightfully applied the 'effective control' test and that this follows from taking Article 8 ARS and Article 7 ARIO together (Ryngaert & Spijkers, 2019, p. 541) (par. 3.8.1-3.10.2). It also upheld the possibility of dual attribution by citing Article 48 ARIO (par. 3.11.2). The Supreme Court thus reinforced the bifocal conduct-specific approach, centred around the 'effective control' test with a preventive interpretation.

6.2.4 Significance of the judgements

For these cases to contribute to peacekeeping accountability, their prospects for setting a precedent need to be considered. While the Dutch courts set a strong precedent by applying Article 7 ARIO to a State, plus embracing the preventive approach for the first time, scholars are wary of its significance. Firstly, the court only confirms the 'effective control' criterium during the transition period and argues that this context differs significantly from the situation

the peacekeeping troops normally find themselves in (Nollkaemper, 2011, p. 1157). The 'effective control' is therefore based on a rather narrow and exceptional context, which could diminish the impact on future cases.

Secondly, the application of the preventive approach is criticised by scholars, including Dannenbaum himself. Dannenbaum (2015b) asserts that the way the courts apply the preventive doctrine in these cases is based on a "contextual peculiarity" because the preventive power is based on the participation of the Dutch State in the decision-making during the evacuation (pp. 414-415). This criticism is partially unfounded, since the courts did not assert that both theoretical and factual control was required to trigger the 'power to prevent, and actually implied the opposite (Nollkaemper, 2011, p. 1151). Therefore, factual control would have been enough and the Dutch State's involvement in the decision-making was not a requirement.

Despite the narrow scope of attribution, "practice shows that even cases dealing with exceptional circumstances can set a precedent" (Spijkers as cited in Higgins, 2014, p. 658). Article 7 ARIO and the preventive approach are successfully used for the first time to attribute peacekeeping conduct to a TCC. These grounds for attribution do create a precedent, and future practice will have to show its significance.

6.3 Mothers of Srebrenica

Mothers of Srebrenica is a foundation created to defend the rights of the survivors of the Bosnian Genocide. The foundation (from now on referred to as plaintiffs) brought a claim before the Dutch courts on behalf of 9 victims, with the objective that a judgement could also be used in the interest of other surviving relatives (Mothers of Srebrenica, 2014, par. 2.45-2.46). While *Nuhanović & Mustafić* was about very specific instances of misconduct of Dutchbat and only applied to two specific families, *Mothers of Srebrenica* is about the wider obligations Dutchbat had to protect the populace in the safe area (par. 4.22).

Initially, the plaintiffs brought a claim against both the Dutch State and the UN. However, the Dutch courts maintained that they had no jurisdiction over the UN (Mothers of Srebrenica v. Netherlands, 2012). The plaintiffs then brought a claim before the European Court of Human Rights (ECHR) and argued that UN immunity was a breach of the right to a fair trial (art. 6(1) ECHR). However, the ECHR declared the complaint without merit (Stichting Mothers of Srebrenica and Others v. the Netherlands, 2013).

The Dutch courts then only proceeded with the assessment of the claim against the State. The plaintiffs argue that Dutchbat failed to meet its obligations bestowed upon it under

national and international law by not offering protection to the refugees in the safe area, before and after the fall of Srebrenica (par. 4.22-4.29).

6.3.1 District Court of the Hague (2014)

In first instance, the District Court builds on the judgement in *Nuhanović & Mustafić* by identifying the 'effective control' test as the relevant criterium for attribution and accepting the possibility of dual attribution (Mothers of Srebrenica, 2014, par. 4.33-4.35). Also, the District Court reinforced the preventive approach (par. 4.46) and even extended it by additionally stating that *ultra vires* acts on the initiative of individual peacekeepers fall under the preventive power of the State and therefore have to be attributed to it (Okado, 2019, p. 287).

In assessing the 'effective control' of the Dutch State over the peacekeeping conduct, the District considered two time periods: before the fall of Srebrenica and after (referred to as the transition period) ((d)-(f)). The court is of the opinion that prior to the fall of Srebrenica Dutchbat was operating under the command and control of the UN and the Dutch State could only incur responsibility if it had contravened UN orders, or for *ultra vires* acts (par. 4.56). After the fall of Srebrenica, the court concludes that the State had full 'effective control' over "providing humanitarian assistance to and preparation of Dutchbat's evacuation of the refugees in the mini safe area" (par. 4.87). Therefore all misconduct during the transition period will be attributed to the State.

After considering the wrongfulness of the conduct that happened in these contexts, the District Court concludes that none of the conduct under the control of the State before the fall of Srebrenica was unlawful (par. 4.335). During the transition period, some of the conduct of Dutchbat was wrongful and the Dutch State is therefore liable for the damage it caused (par. 4.337-4.343). Although eventually, the Dutch State was only liable for a small range of misconduct, the theoretical consideration of the court on what type of conduct would be attributed to the State could provide an important precedent if not overturned by higher courts. The judgement is praised by scholars in favour of the preventive approach and even by Dannenbaum himself (Dannenbaum, 2015b, pp. 416-418).

6.3.2 Court of Appeal (2017)

The Court of Appeal overturned some of the judgements made by the District Court. Although still applying the 'effective control' test, the court reverted to the presumptive approach. "(…), the UN exercised effective control over Dutchbat, *in principle*. Whether in

one or more specific instances *the exceptional situation* occurred that the State also exercised effective control (…) is something that the Association et al. must argue (…)" (emphasis added) (par. 12.1). The court is also of the opinion that UNPROFOR and thus Dutchbat is considered an organ of the UN, which can be seen as a strong overturn of *Nuhanović & Mustafić* where this was purposely left undetermined (par. 15.2).

From this presumptive approach also follows that only conduct that ran counter to UN orders but on instruction of the Dutch State, and *ultra vires* acts conducted completely outside of the 'official capacity' of the peacekeeper can be attributed to the State (par. 15.2-15.3) (Ryngaert & Spijkers, 2019, p. 543).

The Court of Appeal concludes from this that in the period prior to the fall of Srebrenica, the Dutch State did not have 'effective control' over Dutchbat since all conduct fell within the official mandate of the mission (par. 32.1). "If specific operational decisions ran counter to (…) (higher) UN orders (…), the ensuing acts cannot be attributed to the State by reason of this alone" (par. 16.2). However, the Court of Appeal agreed with the District Court that the Dutch State had 'effective control' over the humanitarian assistance and preparation of the evacuation of the refugees, since it "participated in this decision-making at the highest level" (par. 24.1-24.2).

After considering the wrongfulness of the conduct during the evacuation, the Court of Appeal concludes that the only wrongful conduct of Dutchbat was not giving the male refugees in the compound the option to stay there during the evacuation, despite knowing the risk they ran. However, they also conclude that if the male refugees were given this option, their chance of survival would have been just 30%. The liability of the Dutch State is therefore only 30% engaged (par. 73.2).

6.3.3 Supreme Court of the Netherlands (2019)

The Supreme Court upheld most of the judgements of the Court of Appeal. It continued the presumptive approach the Court of Appeal had initiated and agreed that Dutchbat has to be considered an organ of the UN (par. 3.3.3). However, the Supreme Court reversed even further back from *Nuhanović & Mustafić* and argued that the 'effective control' test applied to the State had to be based on the requirements of Article 8 ARS (par. 3.3.4). By doing so, it entered the jurisprudence of the *Nicaragua* and *Bosnian Genocide* cases, which as described in the normative framework has a high threshold for incurring State responsibility (par. 3.4.2-3.4.3). Despite this high threshold, the Supreme Court came to the same conclusion as the Court of Appeal and argued that the Dutch State had 'effective control' over

the conduct during the evacuation (par. 3.5.5). The implications of this theoretical deliberation on the high threshold, however, can have implications for future cases.

In its assessment of wrongful conduct, the Supreme Court reassessed the chance of survival of the male refugees to be only 10% and therefore concludes that the liability of the Dutch State is only engaged for 10% (par. 4.7.9).

6.3.4 Significance of the judgements

In *Mothers of Srebrenica*, the courts considered the wider obligation of peacekeeping troops to protect the population under their care. This judgement can therefore be seen as being less of a 'contextual peculiarity' than *Nuhanović & Mustafić* and can thus provide a precedent for a wider range of future cases. However, *Mothers of Srebrenica* constitutes quite a reversal in the development of the 'effective control' test. The Supreme Court only concluded attribution for a very narrow range of conduct, because of the application of the presumptive approach and the citing of Article 8 ARS. Also, the attribution was premised on the "exceptional situation" of the transition period (Mothers of Srebrenica, 2017, par. 12.1).

Some scholars argue that this exceptionality will prevent the use of *Mothers of Srebrenica* as a precedent in ordinary peacekeeping situations (Ryngaert & Spijkers, 2019, p. 552). However, others strongly disagree with this opinion of the Dutch courts and argue that the situation in Srebrenica was not that exceptional at all. Morris (2021) argues that peacekeeping missions often do not happen according to the planning of the UN and that TCCs often take over 'effective control' (pp. 11-12). The significance of *Mothers of Srebrenica* should therefore not be underestimated.

Additionally, the fact that the liability of the Dutch State was only engaged for 10% can also seem a discouraging prospect. However, this should not be seen as the result of limited attribution to the State. The courts concluded that a wider range of conduct was attributable to the Dutch State than it was held liable for. This is because the situation in Srebrenica was so bleak that the courts considered in many instances that Dutchbat could not reasonably have responded differently. The conduct was thus attributable but not wrongful in this context. This could very well be different in other cases of peacekeeping failure.

7. Conclusions

The above analysis has studied the application of the 'effective control' test to a real-life case to answer the following research question: *In what ways can the 'effective control' test contribute to accountability in peacekeeping?* The analysis has confirmed the theoretical

expectations that have guided this thesis. In all the cases where the 'effective control' test was applied, this led to attribution to the State and therefore accountability.

Furthermore, this thesis has paid attention to the way the 'effective control' test was interpreted and applied. In the *Nuhanović & Mustafić* cases, the Dutch courts applied Article 7 ARIO as the legal ground to establish attribution. Additionally, the courts applied the preventive interpretation. Although the attribution to the State was based on a very specific instance of misconduct, the theoretical deliberation on the rules of attribution can still provide an important precedent. The courts concluded that all conduct whereby the Dutch State was part of the decision-making has to be attributed to it. Additionally, conduct that contravened UN orders as well as *ultra vires* conduct has to be attributed to the State. In conclusion, the 'effective control' test based on Article 7 ARIO, combined with the preventive approach allows attribution of a wide range of conduct to the TCC. Therefore, it is able to fill up a big part of the accountability gap in peacekeeping.

In the *Mothers of Srebrenica* case, the District Court built on the precedent set in *Nuhanović & Mustafić* and continued the development of the preventive approach. However, this was soon overturned by the Court of Appeal. A return to the presumptive approach can be observed, whereby the 'effective control' test is based on Article 8 ARS. With that comes a higher threshold for incurring responsibility. Therefore, all conduct that is not a direct counteract to UN orders will be attributed to the UN. Only when the State is exceptionally part of the decision-making at a high level, can conduct be attributed to it. In conclusion, the presumptive approach and the 'effective control' test based on Article 8 ARS can only contribute to peacekeeping accountability in exceptional circumstances.

The conclusions in this thesis are based on one case study and thus one set of facts. Therefore it cannot be ruled out that the circumstances of the case slightly influenced the outcomes. Future research and case law will have to show how the 'effective control' test works out in different contexts. Additionally, all the court cases studied in this thesis were within the Dutch legal system. Although these judgements still provide a precedent for other countries, it will have to be seen how other legal systems treat the 'effective control' test. Future development of the test in case law will contribute to strengthening and fine-tuning its application. Finally, further research will have to tackle the issue of UN immunity. Perhaps holding TCCs legally accountable will give them the incentive to put political pressure on the UN to reform and reconsider its position in the legal system.

Bibliography

Al-Jedda v. United Kingdom, 27021/08, (ECHR, 2011).

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), 921, (ICJ, 2007).

Behrami v. France, 71412/01, (ECHR, 2007).

Brunnée, J. (2005). International legal accountability through the lens of the law of state responsibility. *Netherlands Yearbook of International Law*, *36*, 3-38.

Cassese, A. (2007). The Nicaragua and Tadić Tests revisited in light of the ICJ Judgment on Genocide in Bosnia. *European Journal of International Law*, *18*(4), 649–668. https://doi.org/10.1093/ejil/chm034

Council of Europe (1950*). European Convention on Human Rights*. Rome: Council of Europe.

Dannenbaum, T. (2015). Dual attribution in the context of military operations. *International Organizations Law Review*, *12*(2), 401–426. https://doi.org/10.1163/15723747-01202007

Dannenbaum, T. (2015). Public power and preventive responsibility: Attributing the wrongs of international joint ventures. In A. Nollkaemper & D. Jacobs (Eds.), *Distribution of responsibilities in international law* (pp. 192–226). Cambridge University Press. https://doi.org/10.1017/CBO9781316227466.008

Direk, Ö. F. (2014). Responsibility in peace support operations: Revisiting the proper test for attribution conduct and the meaning of the 'Effective Control' standard. *Netherlands International Law Review*, *61*(1), 1–22. https://doi.org/10.1017/S0165070X14001016

Higgins, N. (2014). The responsibility of the Netherlands for the actions of Dutchbat: An analysis of Nuhanović and Mustafić. *International Criminal Law Review, 14*(3), 641–659. https://doi.org/10.1163/15718123-01403005

International Law Commission (2001*). Draft Articles on responsibility of states for internationally wrongful acts, with commentaries.* Retrieved from https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

International Law Commission (2004, April 2). *Second report on responsibility of international organizations, by Mr. Giorgio Gaja, Special Rapporteur.* Retrieved from https://legal.un.org/ilc/documentation/english/a_cn4_541.pdf

International Law Commission (2005, June 25). *Responsibility of international organizations: Comments and observations received from international organizations.* Retrieved from https://legal.un.org/ilc/documentation/english/a_cn4_545.pdf

International Law Commission (2011). *Draft articles on the responsibility of international organizations, with commentaries.* Retrieved from https://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf

International Law Commission (2011). *Report of the International Law Commission, sixty-third session of the General Assembly*. Retrieved from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/527/74/PDF/N1152774.pdf?OpenElement

Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), 1031, (ICJ, 2012).

Krieger, H. (2015). Addressing the accountability gap in peacekeeping: Law-making by domestic courts as a way to avoid UN reform? *Netherlands International Law Review, 62*(2), 259–277. https://doi.org/10.1007/s40802-015-0032-z

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), 520, (ICJ, 1986).

Morris, T. (2021). State responsibility and accountability in UN peacekeeping: The case of The Mothers of Srebrenica v. The Netherlands. *International Peacekeeping (London, England)*, 1–31. https://doi.org/10.1080/13533312.2021.1989304

Mothers of Srebrenica v. Netherlands, 10/04437, (Supreme Court of the Netherlands, 2012) https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2012:BW1999

Mothers of Srebrenica v. Netherlands, 17/04567, (Supreme Court of the Netherlands, 2019). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:1284

Mothers of Srebrenica v. Netherlands, 200.160.317/01, (Court of Appeal, 2017). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2017:3376

Mothers of Srebrenica v. Netherlands, C/09/295247, (District Court of the Hague, 2014). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:8748

Mustafić et al. v. Netherlands, 06-1672, (District Court of the Hague, 2008). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBSGR:2008:BF0182

Mustafić et al. v. Netherlands, 12/03329, (Supreme Court of the Netherlands, 2013). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2013:BZ9228

Mustafić et al. v. Netherlands, 200.020.173/01, (Court of Appeal, 2011). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSGR:2011:BR5386

Nollkaemper, A. (2011). Dual attribution: liability of the Netherlands for conduct of Dutchbat in Srebrenica. *Journal of International Criminal Justice, 9*(5), 1143–1157. https://doi.org/10.1093/jicj/mqr048

Nuhanović v. Netherlands, 06-1671, (District Court of the Hague, 2008). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBSGR:2008:BF0181

Nuhanović v. Netherlands, 12/03324, (Supreme Court of the Netherlands, 2013). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2013:BZ9225

Nuhanović v. Netherlands, 200.020.174/01, (The Hague Court of Appeal, 2011). https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSGR:2011:BR5388

Okada, Y. (2019). Effective control test at the interface between the law of international responsibility and the law of international organizations: Managing concerns over the attribution of UN peacekeepers' conduct to troop-contributing nations. *Leiden Journal of International Law, 32*(2), 275–291. https://doi.org/10.1017/S0922156519000062

Prosecutor v. Tadić (Appeal Judgement), IT-94-1-A, (ICTY, 1999).

Rechtspraak.nl (n.d.). *De Hoge Raad: hoogste rechter in civiele zaken, strafzaken en belastingzaken.* Retrieved from https://www.rechtspraak.nl/organisatie-en-contact/organisatie/hoge-raad-der-nederlanden

Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, (1949), ICJ Rep. 174.

Ryngaert, C. M. ., & Spijkers, O. (2019). The end of the road: State liability for acts of UN peacekeeping contingents after the Dutch Supreme Court's judgment in Mothers of Srebrenica (2019). Netherlands International Law Review, 66(3), 537–553. https://doi.org/10.1007/s40802-019-00149-z

Samson, B., & Barsac, T. (2018). The law of state responsibility in the Nicaraguan cases. In E.S. Obregon & B.S. Samson (Eds.), *Nicaragua before the International Court of Justice: Impacts on international law* (pp. 281–303). Cham: Springer International Publishing. https://doi.org/10.1007/978-3-319-62962-9_12

Sari, A. (2012). UN peacekeeping operations and Article 7 ARIO: The missing link. *International Organizations Law Review, 9*(1), 77–85. https://doi.org/10.1163/15723747-00901013

Stichting Mothers of Srebrenica and Others v. the Netherlands, 65542/12, (ECHR, 2013).

United Nations (1945*). Charter of the United Nations and Statute of the International Court of Justice*. San Francisco: United Nations.

United Nations (1946). *No. 4 Convention on the Privileges and Immunities of the United Nations*. New York: United Nations

United Nations (1990). *Model Status-of-Forces Agreement for Peace-keeping Operations* (A/45/594). New York: United Nations

United Nations (n.d.). *Protecting civilians.* Retrieved from https://peacekeeping.un.org/en/protecting-civilians