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Rape without punishment? Ending impunity for peacekeepers that commit sexual exploitation and abuse.

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LIST OF ABBREVIATIONS

CDT = Conduct and Discipline Team

IHL = International Humanitarian Law

IHRL = International Human Rights Law

MINUSCA = United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic

MoU = Memorandum of Understanding

OIOS = Office of Internal Oversight

SEA = sexual exploitation and abuse

SOFA = Status of Forces Agreement

TCC = troop-contributing country

UN = United Nations

UNTAC = United Nations Transitional Authority in Cambodia

ABSTRACT

Sexual exploitation and abuse (SEA) perpetrated by UN peacekeepers has been a pressing issue since the 1990s. Throughout the years, the UN has been scrutinized for contributing to a culture of impunity, in which cases of SEA are not appropriately reported and investigated, and in which perpetrators do not receive adequate penalties. In 2017, Secretary-General Antonio Guterres proposed a “New Approach” that provided measures aimed at enhancing criminal accountability through strengthening reporting, investigation, and follow-up. The purpose of this paper is to explore whether the “New Approach” has been successful in effectively setting an end to impunity of peacekeepers. Taking on a qualitative exploratory methodological approach, the puzzle is answered by analyzing the contents of the “New Approach”, and by comparing whether the proclaimed measures for enhancing accountability have been implemented in practice before 2018 and from 2018 on. I find that the “New Approach” is inherently flawed. While some provisions have been implemented that enhance criminal accountability, shortcomings in the reporting and investigation mechanisms remain. Especially, however, there are fundamental flaws in the prosecution mechanisms of substantiated SEA cases, as there are jurisdictional gaps within the UN system. These lead to an impossibility of achieving criminal accountability for all perpetrators. Thus, the ”New Approach” was ineffective in ending impunity of peacekeepers that commit SEA.

Keywords: sexual exploitation and abuse, impunity, criminal accountability, UN peacekeeping

1. INTRODUCTION

UN peacekeeping missions have the purpose of promoting peace and are mandated with protecting innocent and vulnerable local populations (Hultmann et al., 2022, Odello, Burke, 2016, p. 841). However, since the early 1990s, there have been cases in which peacekeepers themselves have violated codes of conduct and aggravated the safety of local communities by committing sexual exploitation and abuse (SEA) (Westendorf, Searle, 2017, p. 365). These allegations have important implications because they not only harm the victims by traumatizing them psychologically and physiologically, but also tarnish the UN's reputation in front of local populations and the international community (Wills, 2013, p. 48). Therefore, to restore trust in the UN's peacekeeping missions, the UN must take actions to fight SEA. Most importantly, this is done by holding peacekeepers criminally accountable through ensuring that perpetrators receive appropriate penalties (Wills, 2013). In 2003, after there have been scandals concerning peacekeepers engaging in human trafficking and abuse of women and girls, UN Secretary-General Kofi Annan put forward the zero-tolerance policy, as well as codes of conduct peacekeepers have to follow when being on mission (Westendorf, Searle, 2017, p. 367; Alllais, 2011, p. 6). This policy first voiced a prohibition against SEA. However, in the following years, cases of SEA continued being reported, such as scandals in Haiti, Congo, and the Central African Republic (Allais, 2011, pp. 7). At the same time, these allegations were commonly met with impunity by the UN and its member states, as investigation and punishment were insufficient. As compliance and enforcement of the zero-tolerance policy were lacking, the general public reacted by scrutinizing the UN (Westendorf, Searle, p. 382, Grover, 2018, p. 8). In February 2017, Secretary-General Antonio Guterres set out a novel proposal with new strategies to combat SEA allegations through his report 'Special Measures for Protection from Sexual Exploitation and Abuse: a New Approach', hereafter referred to as the 'New Approach' (Oswald, 2016, p. 169). One of the strategies is a new measure aimed at ending impunity, which is done by strengthening reporting, investigation, and follow-up/ accountability (UN Secretary-General, 2017, pp. 11). Thus, I pose the research question:

To what extent has the UN Secretary General's "New Approach" of 2017 been effective in ending impunity of peacekeepers that commit SEA?

Asking this question is important because detecting shortcomings in the current strategy opens the opportunity to address persisting problems. Ending impunity is crucial if the suffering of local populations should stop, and if the UN's reputation should be upheld.

In the following, I first review literature that discusses the culture of impunity around SEA. Then, I conceptualize by defining both sexual exploitation and abuse as well as impunity, and by also situating the laws and policies regarding SEA that apply to peacekeepers. Next, I explain the methodological approach and research design of this paper. Furthermore, I will give background to 1) the emergence of SEA and how the UN has responded to the issue, and 2), discuss whether scholarship puts the UN in a responsible position to legally act upon allegations. Moreover, I analyse and discuss the content of the "New Approach", and whether its measures were implemented. Lastly, I provide a conclusion.

2. LITERATURE REVIEW

2.1 Criminal Accountability and Impunity

Many scholars argue that the reason for SEA's persistence is the absence of an efficient criminal accountability mechanism. When peacekeepers commit SEA without being punished, it creates the impression that they can commit such a crime without having to face any consequences. Thus, scholarship argues, it is necessary to improve criminal accountability to prevent SEA. Various scholars have explored reasons that explain the culture of impunity around SEA and propose measures that would strengthen the criminal accountability mechanism.

To grasp the shortcomings in the system of accountability, one must first understand the framework of accountability within which UN peacekeepers act. Freedman (2018, pp. 965) lays out the legal framework of peacekeepers, and who they are accountable to. Peacekeeping personnel is divided into military personnel, civilian personnel, and experts on mission. On the one hand, military staff is accountable to their home states (pp. 968). This is because the UN has a contract of employment with its member states through the so called 'Memorandum of Understanding' (MoU), and not directly with the military peacekeepers. Thus, if there is an allegation against military staff, their home country has to 1) criminally investigate, and 2) prosecute the perpetrator. However, if the national state refuses to act, the UN is obliged to take further action. Military contingents have absolute immunity from being prosecuted by the host country within which they operate and can only be prosecuted in their national courts (van Leeuwen, 2019, p. 141). On the other hand, civilian and expert staff has a contract with the UN and is thus directly liable to the organization (Freedman, 2018, pp. 966). As Freedman (2018, pp. 966) lays out, civilian personnel and experts on mission are international civil servants, and thus don't fall under the jurisdiction of national courts. Furthermore, civilian personnel possess functional immunity, which protects them from being prosecuted for anything they do that is part of their function. However, sexual exploitation and abuse may never be part of an official's

function, and thus this immunity doesn't apply. In addition, experts on mission possess inviolability, which prohibits them from being arrested until the mission ends.

Various scholars have concerned themselves with barriers to achieving criminal accountability within this framework. Durch et. al. (2009) outline various hurdles inhibiting possible prosecutions: First, they note that both the host state of the mission, as wells as the troop-contributing country (TCC) often do not have an adequate legal system that would allow the prosecution of perpetrators of SEA (pp. 27). This might either result from a country not having the necessary jurisdiction and laws to prosecute, or from a country not having the capacity to do so. Furthermore, Durch et al. (2009, pp. 27) argue, that some states are also simply not interested in prosecuting its nationals for committing SEA. Odello & Burke (2016, p. 848) claim, that the reason for this is that troop-contributing countries (TCCs) want to avoid negative publicity related to their national officials. Second, Durch et al. (2009, pp. 29) state, there might be obstacles resulting from the operational environment, such as the recourses available for investigation. Third, the authors claim that there are barriers arising from the UN's own policy and practices (pp. 30): The UN has never prosecuted one of its staff alleged of having committed SEA in a judicial trial and rather keeps punishment in the administrative realm (p. 30). This is because the UN neither has its own court nor an adequate legislation that could address such cases, resulting in a jurisdictional gap in which the UN is unable to take legal action. Furthermore, because reporting channels of the UN aren't neutral and anonymous, the UN's staff and also victims are reluctant to report as they fear retaliation after reporting by their colleagues or community (p. 31). Additionally, the extent to which the UN practices effective investigations is limited, as the organization does not commonly send professional investigators (p. 32). Lastly, they argue that there are complicated legal dynamics concerning the various types of UN personnel, with different laws and immunities applying to each, making prosecution less straightforward (pp. 33). Odello & Burke (2016, p. 839) agree and claim that immunities are sometimes even actively abused to avoid having to take legal action. Immunity may never apply and should not be an inhibitor of prosecution, yet, in reality, it is.

Correspondingly, Wills (2013, p. 47) agrees with Durch et al. (2009) and claims that the lack of criminal accountability is traceable to the absence of a convention in international law on how to deal with such violations, as well as the UN not undertaking an active role in criminal justice processes (p. 80). While some military staff is prosecuted by their sending state if they commit a crime, others aren't (pp. 47). Thus, similar crimes do not result in similar penalties. Even though the UN has attempted to improve this situation, the author argues that their efforts

have had limited effect (p. 79). In like manner, Burke (2016, p. 126) states that while the UN is limited in its ability to prosecute due to a jurisdictional gap, host states are simply failing in enforcing their laws. He claims that while the shortcomings differ for each type of personnel, measures should be taken to improve accountability in both cases, for example, by hybrid courts or conventions (p. 122, pp. 123).

Other scholars advocate for an approach that not only brings adequate punishment to the prosecutor, but that also emphasizes the right of the victim to attain justice and their role in the process of achieving it. Freedman (2018, pp. 974) argues, that the UN should put the victim at the centre of their investigation and prosecution process. This, she states, could be for instance done by including and supporting the victim, for example by granting them 'meaningful participation' through truth and reconciliation committees (pp. 978). Furthermore, Freedman (2018, p. 981) proclaims, all victims should have the opportunity to bring their case in front of a court. In practice, she argues, victims are often being represented by prosecutors as hearings take place in the home country of the perpetrator, and don't get to be part of the judicial process. In like manner, Grover (2018, p. 21) argues that children, who are often the victim of SEA, should play a role and be included in holding peacekeepers as well as their home state accountable, and that this would constitute a child's basic human right. This, Grover (2018, p. 21) argues, is often only the case at the investigation stage, for example when children are being interviewed about the incident. However, children should also be incorporated into structures of criminal justice. This, Grover (2018, p. 21) claims, and agrees with Freedman (2018, p. 966) is vastly inhibited by the fact that judicial proceedings mostly don't take place in the country the victim is located.

2.2 Other forms of accountability

Some scholars argue that peacekeepers can be held accountable by the UN through other than legal means. Van Leeuwen (2019, p. 135) for example, argues that peacekeepers can also be held accountable through direct non-legal accountability, which would mean that peacekeepers are made accountable to the victims directly (p. 156). Corresponding to Freedman (2018) and Grover (2018), this approach is victim-centred, but the types of accountabilities considered differ. Justice, Van Leeuwen (2019, p. 155) argues, could be achieved by paying the victims to compensate for the harm inflicted upon them. This, the author states, is a viable alternative to legal accountability since comprehensive legal accountability is unlikely to be achieved in the near future because states would need to agree to transfer the jurisdiction of their own nationals to the UN.

To conclude, as scholars have outlined, there are many factors inhibiting that peacekeepers are held criminally accountable, leading to impunity. For most of the shortcomings, the UN would have the power to take positive action and enforce criminal accountability, for example by pressuring member states to prosecute their nationals, by changing their own legislation to fill the UN's jurisdictional gap of prosecuting civilian peacekeepers, or by improving their investigation capacities. The "New Approach" of 2017 by Guterres might be a step in the right direction and has the potential to employ provisions that address these shortcomings. As there is no literature investigating whether the "New Approach" has been effective in implementing strategies that set an end to impunity, the purpose of this paper is to fill this gap.

3. CONCEPTUALIZATION

3.1 What is SEA?

To find out whether a peacekeeper should be held criminally accountable, it is crucial to define SEA in order to assess whether the offence falls under this category. The UN Secretary-General Kofi Annan defined sexual exploitation and abuse in his bulletin of 2003 as

> *"…any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions."* (Grover, 2018, pp. 4)

In other words, SEA is characterized by a power differential between the perpetrator and the victim, in which the perpetrator makes use of the victim's vulnerable position. There are different types of circumstances under which SEA can occur (Westendorf, Searle, 2017, pp. 368): it can take place for opportunistic reasons, but can also be planned, it can be more or less violent and brutal, and it can even involve torture. SEA can also be networked, in which case peacekeepers are involved in human trafficking or other illegal activities of that nature (Westendorf, Searle, p. 373). Furthermore, SEA can be transactional, meaning that food or money is given for the sex service. In this case, the sex service might on the surface seem consensual and agreed to, but since the victim involved often have no choice and agree for the sake of their survival, the sex service is still illegitimate, and thus considered under the category of SEA. As Grover (2018, pp. 6) notes, the ICC ruled in the Bemba Gombo case, that "*the drafters chose not to require that the Prosecution prove the non-consent of the victim beyond a*

reasonable doubt, on the basis that such a requirement would, in most cases, undermine efforts to bring perpetrators to justice".

3.2 SEA as a crime

In what ways are peacekeepers prohibited from engaging in SEA? Asking this is important to assess whether SEA constitutes a crime, which is necessary to justify the need for a criminal investigation and prosecution. Peacekeepers are subject to various frameworks that forbid SEA. First, there are various provisions addressing SEA within the 'internal law' of the UN, constituent of resolutions and issuances (Ngyuen, 2015, pp. 152). In 2003, the Secretary-General issued a Bulletin that established the 'Zero-tolerance'- policy. This document prohibited sexual exploitation and abuse and set out codes of conduct for UN staff (Ngyuen, 2015, pp. 152). Moreoevr, the provisions set out in the Bulletin were also included in the UN Memorandum of Understanding (MoU), which is signed by both the UN and the TCC, prohibiting SEA also for military staff (p. 153). Second, there are prohibitions of SEA in 'external law', which has two components: On the one hand, it consists of national jurisdictions from either national states of the military staff, or national laws in the host states that might prohibit SEA. For example, when a UN PKO is deployed, the UN enters into a Status of Forces Agreement (SOFA) with the host government in which the mission operates. These Agreements vary from mission to mission, but typically also involve a clause addressing the prohibition of SEA. The Model SOFA states that 'the United Nations peacekeeping operation and its members shall respect all local laws and regulations.' (Ngyuen, 2015, p. 153). On the other hand, SEA is prohibited by international law. For example, in 1999, the Secretary-General issued that all operations will be in line with 'general conventions applicable to the conduct of military personnel' (p. 154) such as International Humanitarian Law in the context of an armed conflict, which prohibits SEA (Nguyen, 2015, p. 154, Odello, 2010, p. 358). A case might also be made that the UN should be bound by International Human Rights Law (IHRL) and customary law, even though this is debated (p. 155), as the UN has not officially committed itself to it, and as SEA is not consensually established in customary law. To conclude, the legal framework that makes SEA a crime consists of complex dynamics of internal, national, and international law, and the composition of laws applying may vary from case to case.

3.3 Impunity

To determine whether the "New Approach" was able to end impunity, one must first conceptualize what 'impunity' entails. The ICC defines impunity as "the impossibility, de jure or de facto, of bringing the perpetrators of violations to account—whether in criminal, civil,

administrative or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties" (Song, 2012). There is a differentiation made between *de facto* and *de jure*. While *de facto* impunity refers to crimes not being prosecuted because there is not enough capacity or will, *de jure* impunity exists when laws and jurisdiction are insufficient in addressing crimes (Human Rights Watch, 2018). In this paper, impunity is present in case a peacekeeper perpetrates SEA and does not face a criminal proceeding, either through lack of reporting, investigation, or prosecution. This is because SEA constitutes a crime, and therefore, civil, administrative, and disciplinary measures represent insufficient penalties for perpetrators. Impunity is thus given when criminal accountability remains unachieved. "Effectiveness of ending impunity" is thus accomplished if all incidents of SEA are being reported, adequately investigated, and, if the allegations are substantiated by convincing evidence, criminally prosecuted.

4. METHODOLOGY AND RESEARCH DESIGN

This thesis aims to investigate whether the Secretary-General's "New Approach" of 2017 was effective in ending impunity of peacekeepers committing SEA. To answer this puzzle, I proceed in two steps. First, I outline the "New approach" and analyse it in order to determine whether it yields provisions that could effectively end impunity in theory, or whether there are inherent flaws to the approach. Second, I explore whether the accountability mechanisms proposed by the Secretary-General were carried out in practice. This is done by analysing each mechanism until 2018 and from 2018 on, and by then comparing them. The aim of this is to 1) find out whether the measures proposed by the Secretary-General were implemented after the report, and 2), assess whether the measures were effective in eliminating impunity in practice. My methodological approach is comparative because if the report was not able to end impunity completely, I could explore whether it has at least led to an improvement. Even though the report by the Secretary-General was issued in February of 2017, I only consider cases from 2018 on, since the Secretary-General promises his measures to be implemented by the end of 2017. For the period before 2018, I analyse cases from 2010 on due to data availability. Within the limits of this paper, primary focus is laid upon the UN's own practice, and not on the TCCs practices. This is done because within the strategy 'Ending impunity' in the "New Approach", it is the UN as an organization that commits itself to following the provisions set out in the document. The UN does not exceed much power over practices of the member states and merely provides a 'voluntary' contract that member states might or might not choose to follow. Thus,

I discuss the “New Approach” and the measures implemented to an extent that addresses the UN’s practices. However, I give a brief overview over TCCs’ practices when it comes to criminally investigating and prosecuting, in order to discuss the UN’s response to potential failures by the TCCs. I use a qualitative exploratory method, analyzing both primary, as well as secondary sources. Furthermore, I also make use of numbers for descriptive purposes. A qualitative method is most appropriate to answer my research question because it allows me to put into context and capture how reporting, investigation, and follow-up are being executed. Furthermore, making use of judgement, qualitative analysis allows me to assess whether each step has improved by providing me with detailed information. The sources of my analysis include reports by the Secretary-General, scholarly research papers, newspaper articles, and press statements by the Code Blue Campaign. I collected the sources from the Code Blue Campaign Webpage, the UN Webpage, the Leiden University Catalogue, and databases such as ‘jstor’. There is the possibility that some reports contain wrong information. For example, the Secretary-General might have a conflict of interest in reporting the misconduct of members of his own organization. For this reason, I selected data from diverse sources to make my work more reliable.

5. BACKGROUND

In the following, I will first give background to when SEA emerged in UN PKOs and how it was addressed by the UN throughout the years. Then, I will make a case to argue why the UN is responsible for bringing peacekeepers that commit SEA to account under international law.

5.1 Incidents and Policy History of the UN Dealing with SEA

Westendorf & Searle (2017, p. 366) note that the first reported incident of sexual exploitation and abuse by a peacekeeper occurred in 1993 in Cambodia in the mission UNTAC, where the sex industry expanded significantly and violence and abuse by peacekeepers were reported. The UN did not attach much significance to the issue and advised peacekeepers to undertake measures that primarily saved the UN’s reputation, rather than measures that would set an end to the problem. The issue of SEA continued in various missions, and a negative media backlash emerged only in 1999 (p. 367), when organizations like the ‘Human Rights Watch’, the ‘United Nations High Commission for Refugees’ (UNHCR), or ‘Save the Children’ began disclosing cases of SEA in refugee camps that included child prostitution (Odello, 2010, p. 350). The victims of these crimes were usually women and children. Due to continued accusation, the Office of Internal Oversight Services (OIOS) of the UN investigated in 2001 and verified the allegations (Westendorf, Searle, 2017, p. 367). In response, the Secretary-General issued the

zero-tolerance policy, which established a strategy to take action against SEA (Allais, 2011, p. 6). It set out codes of conduct for all personnel working on the missions (Westendorf, Searle 2017, p. 367). However, in 2004, the media reported allegations of SEA that included torture, pornography, rape, and paedophilia among others in the UN's PKO in Congo (Allais, 2011, p. 6; Odello, 2010, p. 350). In response, an investigation was conducted: The Zeid Report titled 'A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations' of 2005 made visible that there are still several shortcomings in the UN's policy towards SEA (Odello, 2010, p. 351). Throughout the years, various new policies were implemented, such as the 2008 'Comprehensive Strategy on Assistance and Support to Victims of SEA by UN Staff and Related Personnel' by the UN General Assembly (Westendorf, Searle, 2017, p. 379). However, numbers of SEA cases remained high, including reports of grave scandals such as cases that involved child abuse in the Central African Republic during MINUSCA in 2014 (Grover, 2018, pp. 9).

5.2 Is the UN responsible to act?

'How is it possible that we can argue that when our own peacekeepers, the people we have sent into the field, rape women and children, the Security Council does not have responsibility? How can we say that? This is our problem, our responsibility.' (UN Security Council, 7642nd Meeting, p. 23)

In the following, I will discuss whether the UN is responsible to act upon allegations of SEA by their peacekeepers under international law. As international law is complex and layered, the answer is not straightforward.

Nguyen (2015, pp. 149) notes that the UN has an objective international legal personality, making it a legal subject. This has the implications that it is '(a) able to produce its own legal effects; (b) able to have the legal effects of its own actions attributed to it; and (c) may be held legally responsible for those attributed acts.' Thus, Nguyen (2015) concludes, the UN has legal rights and responsibilities, has the power to take legal actions against peacekeepers that commit SEA, and can be held to account if it fails to do so. But what sources of law can the UN be held accountable to? The sources persist of 1) the rules of the organization, and 2), 'external law' of international, regional, or domestic nature. As discussed in the conceptualization, there are legal provisions addressing and prohibiting SEA within these sources.

In 2011, the UN adopted the 'Articles on the Responsibility of International Organizations' (ARIO), which outline the principles of the responsibility of international organizations if an

international wrongful act is committed, which is thus applicable in determining the UN's responsibility of SEA committed by their peacekeepers. The responsibility is dependent on two criteria. First, the act has to a) be 'attributable to that organization under international law'. (p. 161). To be attributable to the UN, the crime must be committed by either an 'organ', or an 'agent' of the UN. Here, civilian peacekeepers fall under the category of 'agent' as they are 'charged by an organ of the organization with carrying out or helping to carry out one of its functions'. Military peacekeepers fall under this category only if the UN has effective control over the military contingent of a TCC. There is one critical obstacle to the UN's responsibility for SEA: That is, the UN Office of Legal Affairs has stated that the UN may not be liable for crimes that peacekeepers commit in their private capacity, meaning that for a crime to be attributable, it must fall under '*the performance of official duties*' (p. 166). However, some arguments would still make the UN liable: First of all, the Commentaries of ARIO state that the UN might still be liable in the case that they didn't take sufficient measures to prevent SEA. Second, it might be argued that the peacekeeper's crime falls under *ultra vires*. The second criterion the act has to fulfil is that it 'b) constitutes a breach of an international obligation of that organization.' Such a breach of an international obligation can be found in IHL, and UNSC Resolutions that mandate the protection of local populations. Despite these provisions in which one could make a case to argue for the UN's responsibility, Art. 33 of the ARIO states that the responsibility may not be owed to individual victims, which might be a crucial obstacle for women and children that want the UN to enforce criminal accountability. Thus, even though one would expect the UN to be liable to crimes committed by their employees, Article 33 of the ARIO undermines this.

However, since the UN itself has committed itself to ending impunity of peacekeepers, assessing their efforts in achieving this is still valid.

6. ANALYSIS

6.1 The New Approach – Bringing an End to Impunity

"*We will not tolerate anyone committing or condoning sexual exploitation and abuse. We will not let anyone cover up these crimes with the UN flag*" – Secretary General Antonio Guterres, 2017 (UN News, 9th of March 2017)

The UN Secretary-General issues a report dedicated to SEA every year since 2004 (van Leeuwen, 2019, 144). In 2017, Antonio Guterres was appointed as the new Secretary-General, and issued a report called 'Special Measures for Protection from Sexual Exploitation and

Abuse: a New Approach'. This report re-emphasized the UN's commitment to combat SEA and introduced a novel way of handling it. His approach contains four main strategies, one of which is 'ending impunity' (p. 11; overview in the Appendix). This strategy consists of three measures that lay out provisions for how the UN should change its accountability structures of peacekeepers. The first measure set out is 'better reporting'. To do this, the Secretary-General suggests that reporting shall be faster, more accurate, and more comprehensive. Furthermore, he proposes that missions should employ community-based complaint mechanisms, and he wants to actively reach out to local populations. His second measure 'strengthening investigations', should be accomplished by pooling UN investigative capacities (p. 12). Additionally, he plans to generate specialist cadres of investigation, each having a different field of expertise, such as 'forensic analysis', or 'special needs of children'. Furthermore, the investigation should be standardized with common practices being followed in every investigation. His third measure is to 'improve accountability and follow-up' of credible allegations (p. 13). This shall be done by UN leaders giving unannounced visits to missions. Furthermore, the Secretary-General commits the UN to take '*all appropriate measures to address allegations in accordance with established rules and procedures*' (p. 13). Additionally, he suggests that preventative measures such as training and educational programmes should be implemented and that only contributions by governments that commit to UN values shall be accepted. There is also a fourth ('A Compact with Member States') and fifth ('Non-United Nations forces') measure, that deal with provisions that member states and regional organizations that contribute forces can implement voluntarily. However, this paper's focus is laid on actions that can be attributed to the UN, and thus only the preceding three strategies will be examined. One provision that can be found under another section, but that is still relevant to 'ending impunity', is the arrangement that Member states should consider, if a member state doesn't act upon allegations, to withhold the payments that the state would otherwise receive for the contribution of its troops (p. 10). Instead, these payments are contributed to the Trust Fund, which enables payments directed at victims.

Are these measures able to end impunity? The "New Approach" in itself is flawed and does not lay an appropriate framework that could achieve criminal accountability. Even though its second strategy is titled "ending impunity", the Secretary-General doesn't propose measures that would possibly achieve this. Improving reporting and investigations are important steps in the criminal accountability mechanism, and the new approach does take appropriate measures that would make both more comprehensive and accurate. However, while the "New approach" does aim to achieve "appropriate punishment" for all peacekeepers, which could only be

determined in a judicial trial, it doesn't propose an initiative that would make it possible for the UN to take legal action against civilian peacekeepers. Instead, possible punishments remain in the administrative sphere, even though reporting and investigation would lay a foundation for prosecutions. Furthermore, in case a member state does not prosecute its national, the UN does not have any opportunity to take legal action to enforce a criminal proceeding. However, the new provision of pressuring member states by financial means to investigate is an improvement. While it does not enforce criminal accountability in a direct sense, it might still increase the odds that a country will prosecute. Thus, the 'new approach' is not designed to put an end to impunity. While it does address ways to prevent SEA, such as training and unannounced visits, it does not take steps towards enhancing criminal accountability *after* a case has been investigated. For the UN to end impunity, it would need to take measures that would create the possibility to prosecute civilian staff and experts on mission, as well as military staff that is not prosecuted by their national states. However, no such provision is given in the "New Approach", and impunity remains to a large extent *de jure* because of the UN's jurisdictional gap in prosecuting civilian peacekeepers and *de facto* due to lack of enforcement by TCCs.

6.2 The three measures

Have the measures set out by the UN Secretary-General been implemented? To what extent have they been effective in ending impunity?

6.2.1 Reporting

Until 2018

Many reports investigating the time before the "New Approach" claim that the reporting mechanisms were insufficient, leading to underreporting. An indicator of underreporting can be found in the fact that the distribution of condoms, as well as HIV Testing seem to have been a routine in UN missions, in a way that is disproportionate to reported cases of SEA (OIOS, 2015, p. 22). There are various explanations for the underreporting of SEA: First, local populations were unaware of the opportunity to report. In their report of 2015, the OIOS (pp. 21) noted that many victims of SEA did not even know that the UN had a policy on SEA, nor that there were complaint mechanisms in place. A report by an independent panel also states that '*local communities are frequently uninformed as to the procedures for reporting incidents of misconduct by United Nations personnel*' (UN, 2015, p. 85). Second, the reporting mechanisms were confusing to local populations. King et. al. (2021) state that populations in Haiti reported that there were multiple overlaid reporting mechanisms, which were too complex

(p. 766). Awori et. al. (2013, p. 3) state that victims could for example report to the OIOS, supervisors, the Conduct and Discipline Team (CDT), or mission leaders. Third, the report highlighted that when local populations tried to report cases of SEA to the UN, they were often offered money in return for staying silent (Awori et. al., 2013, p. 7).

Awori et al. (2013, p. 16) note that outreach to local communities was lacking in all UN PKOs except for UNMIL, where some offices were in loose contact with the local community to seek information about possible SEA conducted by peacekeepers, as wells as informing the community about the UN's policy stance towards SEA. The OIOS (2015, p. 35) also reports some extent of community outreach in trying to raise awareness for reporting mechanisms. Additionally, formal community-based complaint mechanisms were in place to a limited extent as there was only one pilot site in the Democratic Republic of the Congo (OIOS, 2015, p. 44, IASC, 2016). Lastly, the OIOS (2021, p. 20) reports, that during the time of 2015 to 2017, the average reporting and referral for investigations took about 35 days, even though it should take only 10 days.

To summarize, before the "New Approach", SEA reporting was slow, inaccurate and noncomprehensive as there was continuous underreporting. The information collected in the reporting mechanism was not standardized across agencies, with each agency collecting different types of information. Community-based complaint procedures were almost non-existent with one exception, and community outreach was present on a small scale, though both were not institutionalized.

From 2018 on

Has reporting improved? First, inaccuracy of reporting persists after the "New Approach", as the OIOS (2021, pp. 10) reveals that underreporting remains an issue. In a 2019 survey, 13% of respondents answered that they had knowledge of cases of SEA (equally 2016 respondents), while only 3.5% reported them (OIOS, 2021, p. 11), thus calling into question the accuracy of overall reporting. Second, the speed of reporting has become faster, but only slightly. Whereas in 2016 the average duration for review and referral, meaning the time it takes from the initial report to when the Head of the Mission sends the report to responsible authorities, was 38 days, in 2018 it was at 28 days (OIOS, 2021, p. 20; Appendix, Figure 1). Still, there were cases in which the Headquarters were only informed almost a month after initial reporting (p. 11). The speed of reporting thus still exceeds the envisaged 10 days. Third, comprehensiveness of reporting is achieved. In 2018, an incident reporting form has been set in place to make sure that the same information is gathered for all cases within peacekeeping missions (Secretary

General, 2018, p. 11). In his report of 2023, the Secretary General wants to finalize an online reporting form that is to be used across the system including in peacekeeping missions (p. 12).

According to the OIOS report of 2021, improvements in reporting were made as 5 community-based complaint networks were set in place in MINUSCA and MINUSCO (p. 10, p. 32, p. 2), meaning that community-based complaint mechanisms are now set in place in one more mission. This still leaves 13 currently ongoing missions in which formal community-based complaint mechanisms are not given. Additionally, the OIOS (2021, p. 41) report states that most UN missions did not engage in community outreach.

In comparison, whereas reporting has become faster and more comprehensive, the inaccuracy of reporting remains. Furthermore, there continues to be a lack of formal community-based complaint procedures and community outreach.

6.2.2 Investigation

Investigations are conducted by both the OIOS and the TCCs, either separately or joint. As this paper's primary focus is laid on the UN's practices, I will mostly discuss investigations by the OIOS.

Before 2018

Several reports describe that the investigation mechanisms by the UN before 2018 are lacking in several aspects. First of all, Awori et al. (2013) claim that the investigations that the OIOS conducts are 'extremely slow' (p. 13). The OIOS states that their investigations should last up until 6 months, but often this target isn't met. That is because even the decision to undertake an investigation is a lengthy process. The average investigation time was 8.8 months in 2017, much longer than the envisaged 6 months (OIOS, 2021, p. 22). A reason for this is that there are not enough human resources to conduct the investigation (Awori et. al., 2013, p. 13). This, the report claims, leads to a backlog of cases, which has the effect that until the time comes that a case is being investigated, the perpetrator might have already left, and it might become impossible to gather sufficient evidence. Furthermore, there are even cases in which investigation by the UN is still pending (UN, 2023). Thus, one can conclude that until 2018, the UN's investigative capacity was lacking. Second, there were no common standards of practice with investigative practices differing for all TCCs and the UN (Awori et al., 2013, p. 11). Lastly, specialist cadres aren't mentioned in any reports, leaving one to assume that they were absent. To summarize, the standards for investigation set out in the "New Approach" were severely lacking.

As for TCCs, necessary criminal investigations of allegations that occurred before 2018 are in part still absent. Out of 170 cases that TCCs undertook investigations in, 20 are still pending to this day (UN, 2023). The UN did not take further action to enforce criminal investigations.

From 2018 on

In his report of 2019, the Secretary-General states that the UN was successful in pooling investigative capacities (p. 11). Indeed, there has been some improvement in the speed of investigations. While the duration still remained at 8.9 months in 2018, it went down to 7.9 months in 2019 (OIOS, 2021, p. 22). However, in 18 per cent of all cases, the investigation still took 21 months on average (OIOS, 2021, p. 23), with investigations undertaken by the UN taking considerably longer than TCC investigations. This calls into question whether the UN has the sufficient investigative capacities the Secretary-General claims it does. Additionally, the Secretary-General reports in 2019 that clear and uniform procedures are to be adopted in 2019 that guide every investigative process (p. 11). Lastly, there is no mention of the creation of specialist cadres that address specific SEA cases after 2018, letting one to assume that this provision was not implemented.

To conclude, there has been an improvement in the way investigations are handled by the UN, but it does not fulfil the provisions set out by the "New Approach". While there has been an increase in investigative capacities, they don't suffice in meeting deadlines set out by the OIOS. Lastly, while clear procedures were adopted, an absence of specialist cadres remains.

6.2.3 Accountability and Follow-Up

Before 2018

'Appropriate punishment' - Before the "New Approach" was issued, there was no measure the UN took to hold criminally accountable civilian peacekeepers and experts on mission, as well as military peacekeepers that are not prosecuted by their national states. This has led to 37 civilian perpetrators of SEA not being prosecuted through a criminal proceeding from 2010 to 2018 (UN, 2023). Instead, the offenders were given administrative and disciplinary punishments, such as repatriation, dismissals or financial sanctions (UN, 2023; OIOS, 2015, pp. 19). Furthermore, even though there were 117 substantiated allegations of military staff, only 79 of them had to face a criminal proceeding by their national state (UN, 2023). In cases that troop-contributing countries did prosecute, perpetrators accused of grave crimes such as rape of children received minimal sentences, such as 40 days in prison, and sometimes even retained their position in the military (van Leeuwen, 2019, p. 142). However, in many cases,

there was no criminal proceeding at all. Equally to civilian peacekeepers, many allegations were merely responded to through disciplinary measures (UN, 2023). When criminal proceeding was lacking, the UN was unable to enforce further action. However, there has been some action regarding the UN pressuring member states to follow up on their prosecution through non-legal means (van Leeuwen, 2019, p. 143). For example, the Security Council stated that entire peacekeeping contingents from countries with SEA allegations, which pressures these countries to investigate and prosecute. Yet, overall, only about half of civilian and military peacekeepers that committed SEA had to face a criminal proceeding, leading to a lack of "appropriate punishment".

Shortly before the New Approach was proclaimed by the Secretary-General, there was a scandal resulting in international media attention regarding the lack of accountability and action the UN showed toward grave allegations against UN staff employed in MINUSCA (Code Blue Campaign, April 13th, 2016): An internal report was leaked due to the unwillingness of the UN to act upon allegations of peacekeepers sexually abusing children in exchange for food and money (Laville, 29th of April, 2015). Even though an unofficial investigation took place in which the children were interviewed and substantiated evidence was gathered, the cases were not referred to French authorities, and UN soldiers and local populations weren't informed. Victims described how they were forced to SEA even after investigations had started (Code Blue Campaign, May 29th, 2015). With the first interview taking place in early May of 2014, in mid-July 2014 action by the UN had still not taken place in the knowledge of ongoing abuse, until UN employee Anderss Kompass leaked the report to French authorities. Thus, during the CAR incident the UN even failed to take any form of action and fell short in even notifying the authorities of what was going on, thus not taking steps to appropriate punishment.

'Training' - Awori et al. (2013, p. 8) note that there are significant gaps in anti-SEA induction and refresher training of UN and military staff. This is caused by 1) a lack of coordination between offices in peace missions, and 2) difficulties to keep track of who had undergone training and who didn't.

'*No cooperation with states not respecting UN values*' – Before 2018, the UN collaborated with governments that were under scrutiny for not adequately addressing SEA. Most prominent, the UN collaborated with Burundi, which's soldiers have been accused of 43 allegations of rape and child abuse since 2015, and which the UN Independent Investigation on Burundi (UNIIB) claimed were 'not fit to be peacekeepers' in 2016 (Code Blue Campaign, 2019). Furthermore, Burundi prosecuted none of the perpetrators, even though the UN alongside a Burundian

National Investigation Officer found 'substantiated' evidence in various cases. The lack of action taken by the Burundian government was incompatible with the UN's values. Yet, the UN kept collaborating.

'Unannounced visits' – Before 2018, there was no documentation of any unannounced visits by leaders.

From 2018 on

'Appropriate punishment'

"*Criminal accountability for sex crimes remained largely unachieved with some success regarding uniformed personnel but none regarding civilians and experts on mission*.", is what the OIOS states in their report of 2021 (p. 28). As already discussed within the analysis of the "New Approach", it did not provide for any provision that would enable the UN to prosecute civilian staff or enforce the prosecution of military staff. Thus, UN data shows that from 2018 to 2022, there have been 34 cases of civilian UN staff engaging in SEA, all of which merely received disciplinary punishment by the UN (UN, 2023). For example, UN staff from the UK was accused of child rape (Code Blue Campaign, February 21, 2021). While the UK did not take on the case because it does not fall under its jurisdiction, the UN merely fined the rapist. Furthermore, since 2018, there have been 60 cases of substantiated allegations against military personnel, of which 40 perpetrators had to face criminal proceedings of their national states (UN, 2023).

'Training' - OIOS (2021, p. 8) states, that even after the "New Approach" was published, the UN's training capacities were lacking and '*unsatisfactory*'. A survey from 2019 shows, that only about 52% of staff members have completed it (OIOS, 2021, p. 9). Furthermore, 123 officials in leadership positions, who act as role models and oversee UN peacekeepers and possible misconduct such as SEA, haven't completed it either (OIOS, 2021, p. 8).

'Cooperation with states that don't respect UN values' – The Code Blue Campaign (March 19, 2019) reports, that the UN kept collaborating with Burundi even after the "New Approach" has been published, which claimed that the UN will not collaborate with countries that do not submit to UN values and have respect for human rights.

'No unannounced visits' - There is no documentation of any unannounced visit by leaders to a mission.

7. DISCUSSION

The "New Report" has failed in effectively eliminating impunity. First of all, reporting has improved only to a limited extent. It has become faster and more uniform and the new electronic complaint form might eliminate the problems attached to reporting directly to officials of the organization. However, outreach to local communities and community-based complaint mechanisms were not institutionalized, calling into question the extent to which local population even know about the UN's policy on SEA and the opportunity to report. Moreover, UN PKOs primarily operate in areas characterized by poverty and crisis, letting one doubt whether all victims have access to electronics and the internet, which might inhibit them from filing a complaint. Second, investigations have improved to some extent. They have become faster, even though they still take longer than the envisaged 6 months, and common practices were applied. Yet, specialist cadres were not established. The biggest lack in the UN's accountability mechanism, however, can be found in the third mechanism: accountability and follow-up. Even though substantiated evidence of SEA is provided, peacekeepers are commonly not prosecuted because the UN's policy and practices do not enable it to take legal action. Furthermore, other mechanisms of accountability, such as giving unannounced visits, improving training, or not collaborating with controversial states set out in the "New Approach", remain unachieved. Thus, one can conclude that impunity persists both 'de jure' and 'de facto'. It persists 'de jure' because of the jurisdictional gap within the UN system, and it persists 'de facto' because of the lack in the reporting and investigation mechanisms, as well as in the lack of enforcement by TCCs.

8. CONCLUSION

Thirty years after the first reported incidents, sexual exploitation and abuse continues to be a pressing issue. One of the most significant measures that could fight the crimes, increasing criminal accountability, remains largely unachieved. Even though new policies and initiatives to improve criminal accountability keep being proposed, the fundamental shortcoming of the accountability system – the fact that there is a jurisdictional gap in the UN's system when it comes to prosecuting civilian peacekeepers, and the fact that TCCs commonly do not enforce their legislation – is not addressed by them. Thus, while the "New Approach" has achieved slight improvements in reporting and investigation, it was unable to effectively end impunity, as prosecution is often missing. There are some limitations to this paper: First of all, there might be wrong information in the reports I analysed. Individuals employed by the UN, such as the Secretary General, might have a conflict of interest in unveiling the shortcomings in the UN's

policy, thus shaping the way information is portrayed. Additionally, I am limited in access, as there might also be reports that are confidential. Second, underreporting is inherent to SEA because of victims' as well as UN staff's reluctance to report. Thus, the actual number of SEA cases cannot be known. Future research could propose measures or pathways that would make it possible for the UN to extend their ability to take legal action. Furthermore, with the knowledge that this might be unfeasible (Wills, 2013), scholarship could also investigate into further non-legal actions the UN might take to pressure member states to prosecute their staff.

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APPENDIX

Overview of 'Ending Impunity' in the New Approach

Better Reporting	- Faster, more accurate, and comprehensive - Standardized incident reporting form - Community-based complaint mechanisms; reaching out to local populations.
Strengthened investigations	- Pooling SEA investigative capacities - Applying common standards of practice - Creating specialist cadres of SEA investigators
Improved follow-up and accountability	- UN heads giving unannounced visits to missions. - Implementing preventive measures like training - Taking appropriate measures to address allegations. - Not accepting contributions by persons, companies or governments not committed to UN values.