

SCHOOL OF LAW

**LLM IN:** International Humanitarian Law

**STUDENT'S NAME:** Valentine Hambye

**SUPERVISORS'S NAME:** Dr. Carla Ferstman

**DISSERTATION TITLE**

Sexual exploitation and abuse by UN peace operations personnel through the lens of Women,  
Peace and Security

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UNIVERSITY OF ESSEX

SCHOOL OF LAW

LLM in International Humanitarian Law

2018-2019

Supervisor: Dr. Carla Ferstman

DISSERTATION

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Name: Valentine Hambye

Registration number: 1802587

Number of words: 18920

Date submitted: 03 October 2019

## ACKNOWLEDGEMENTS

All my thanks to Dr. Carla Ferstman for her supervision, time, and expertise.

To the long-distance friends (Alex, Ilayda, Aude) who were dragged along on this adventure thanks to the magic of the internet for the second time around, and to those closer to home (Juliette, Arlen, Adair) who – literally, on occasion – held my hand through the process.

To Jérôme, Roxane, dad, for listening to without a clue but with a lot of patience as I talked in circles, and for volunteering to read the finished product with even less of a clue. I promise this is my last dissertation – for now!

And as always, the biggest of thank yous to Siân and Anja, for always holding the ladder up for me.

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## LIST OF ACRONYMS

<b>7-PAP</b>	7-Point Action Plan
<b>BAI</b>	<i>Bureau des avocats internationaux</i>
<b>CaAC</b>	Children and Armed Conflict
<b>CIDT</b>	Cruel, inhumane or degrading treatment
<b>CRSV</b>	Conflict-related sexual violence
<b>DPA</b>	Department of Political Affairs
<b>DPKO</b>	UN Department of Peacekeeping Operations
<b>GA</b>	Gender Advisor
<b>IASC:</b>	Inter-Agency Standing Committee
<b>IJDH:</b>	Institute for Justice & Democracy in Haiti
<b>LNP</b>	Liberian National Police
<b>MARA:</b>	Monitoring, Analysis and Reporting Arrangements
<b>MINUJUSTH</b>	UN Mission for Justice Support in Haiti
<b>MINUSCA</b>	UN Multidimensional Integrated Stabilisation Mission in Central African Republic
<b>MINUSMA</b>	UN Multidimensional Integrated Stabilisation Mission in Mali
<b>MINUSTAH</b>	UN Stabilisation Mission in Haiti
<b>MONUSCO</b>	UN Organisation Stabilisation Mission in the Democratic Republic of the Congo
<b>OIOS</b>	Office of Internal Oversight Services
<b>POC</b>	Protection of Civilians
<b>SEA</b>	Sexual exploitation and abuse
<b>SGBV</b>	Sexual and gender-based violence
<b>SRSG</b>	Special Representative of the Secretary-General
<b>SVC</b>	Sexual violence in conflict
<b>TCC</b>	Troop-contributing country
<b>ToE</b>	UN Team of Experts on Rule of Law and Sexual Violence in Conflict
<b>UNAMID</b>	African Union-United Nations Hybrid Operation in Darfur
<b>UNC</b>	UN Charter
<b>UNGA</b>	UN General Assembly
<b>UNMIL</b>	UN Mission in Liberia
<b>UNMISET</b>	UN Mission of Support in East Timor
<b>UNMISS</b>	UN Mission in South Sudan
<b>UNOCI</b>	UN Operation in Côte d'Ivoire
<b>UNSC</b>	UN Security Council
<b>UNSG</b>	UN Secretary-General
<b>UNSMIL</b>	UN Support Mission in Libya
<b>UNSOM</b>	UN Support Mission in Somalia

**UNTAC**

UN Transitional Authority in Cambodia

**WPA**

Women Protection Advisor

**WPS**

Women, Peace and Security

## INTRODUCTION

*War is gendered in its causes and consequences.*<sup>1</sup>

This dissertation proposes to look at whether and to what extent one can view sexual exploitation and abuse (SEA) by peacekeepers through the lens of Women, Peace and Security (WPS), and whether WPS might be used to address SEA – it is, after all, deeply rooted within the very issues of gender and power dynamics that WPS aims to solve. In order to analyse this possibility, chapter one provides an assessment of the existing UN framework on SEA, the way it was developed in silo and always in reaction to various crises, as well as what perception of SEA it puts forward. Chapter two then dives into an in-depth look of two of WPS' pillars, participation and protection, and the ways in which they could be extended to address SEA by peacekeepers. Participation comes first: after an overview of this pillar in WPS broadly speaking, the focus is on participation of women in UN peace operations. This particular aspect of participation appears to be a gateway to protection: this allows us to segue into the third chapter on protection, arguably the dominant pillar of WPS, and its various modalities. Of particular interest here are protection *via* the development of new roles in WPS, and protection *via* accountability for SEA. The fourth and final chapter analyses the question of peacekeeper babies, a key issue under the SEA framework that does seem to not quite fall under the remit of WPS.

Discussion of WPS and SEA was made possible in the first place by the rise of international attention to sexual and gender-based violence (SGBV). SGBV has gone hand-in-hand with military operations virtually since the dawn of time. There has been a shift in perception over time, from rape as an inevitable consequence of conflict, the victims of which are deemed collateral damage, to a weapon of war that can be wielded to cause terror or political repression.<sup>2</sup> When it was first internationally addressed, briefly, in the aftermath of World War II, it was spoken of in terms of an attack on a woman's honour<sup>3</sup> or in reference to her capacity as a (potential) mother.<sup>4</sup> It took close to fifty years and the conflicts in the Balkans and Rwanda in the 1990s for sexual violence to

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<sup>1</sup> Claire Duncanson, *Gender and Peacebuilding*, Polity, 2016, 1.

<sup>2</sup> Claire-Elise Peron, "Comprendre le viol de guerre (1/6) – L'histoire des violences sexuelles liées aux conflits: du dommage collatéral à l'arme de guerre", [https://www.notaweaponofwar.org/comprendre-le-viol-de-guerre-1-6-lhistoire-des-violences-sexuelles-liees-aux-conflits-du-dommage-collateral-a-un-outil-strategique/#pll\\_switcher](https://www.notaweaponofwar.org/comprendre-le-viol-de-guerre-1-6-lhistoire-des-violences-sexuelles-liees-aux-conflits-du-dommage-collateral-a-un-outil-strategique/#pll_switcher), 15 February 2019, accessed 23 August 2019.

<sup>3</sup> International Committee of the Red Cross, *Geneva Convention IV Concerning the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, art. 27.

<sup>4</sup> *Ibid*, art. 38, 98, 132.

become a standalone issue of interest to the international community. The statutes of the international criminal tribunals set up to try and address the violations committed over the course of both crises explicitly included, for the first time, rape as a crime against humanity.<sup>5</sup> This was followed by the inclusion of SGBV as a crime before the International Criminal Court,<sup>6</sup> then by the acknowledgement that it may constitute genocide in certain scenarios.<sup>7</sup> Rape and other forms of SGBV can also amount to torture and cruel, inhumane or degrading treatment (CIDT). This is, for the most part, on a different level than SEA, but is worth mentioning nonetheless as it helped create a favourable environment for discussions on SEA by peacekeepers to occur.

Per its Charter (UNC), the UN's purpose is to "maintain international peace and security".<sup>8</sup> There are different ways for it to do so: conflict prevention and mediation, also known as preventive diplomacy; peacemaking; peacekeeping; peacebuilding; peace enforcement. The 1992 Agenda for Peace provides the definitions for the first four, in a UN context, that are still used today: "*Preventive diplomacy* is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur. *Peacemaking* is action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations. *Peacekeeping* is the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peacekeeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace".<sup>9</sup> Peacebuilding is "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict".<sup>10</sup> Finally, peace enforcement entails the permission to use force granted by the United Nations Security Council (UNSC) under Chapter VII of the Charter.

While the definitions may seem clear in theory, the distinctions are hazy in practice. Furthermore, it is uncommon for a UN mission mandate to include just one type of activity. For this reason, the all-encompassing term peace operation is preferred. It will be the term used in this analysis, and is to be understood broadly as covering any

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<sup>5</sup> UNSC, *Statute of the International Criminal Tribunal for the Former Yugoslavia*, 25 May 1993, art. 5(g); UNSC, *Statute of the International Criminal Tribunal for Rwanda*, 08 November 1994, art. 3(g).

<sup>6</sup> UNGA, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, art. 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi).

<sup>7</sup> ICTR, *The Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, ICTR-96-4-T, 02 September 1998.

<sup>8</sup> UN, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art. 1.

<sup>9</sup> UNGA, *An Agenda for Peace: resolution / adopted by the General Assembly*, 18 December 1992, A/RES/47/120 A, §20.

<sup>10</sup> *Ibid*, §21.

and all of the above. Personnel, whether military, police, or civilian, engaged in peace operations will be broadly referred to as peacekeepers, even if not deployed in a peacekeeping mission *stricto sensu*.

The missions of UN peacekeepers have grown to include protecting and promoting human rights, as well as assisting in restoring the rule of law. They are to safeguard and embody the principles of the UN at all times, especially in their interactions with people in the field, whom they are there to protect. These tend to be persons in situations of acute vulnerability due to the context in which they find themselves. For this reason, SEA by peacekeepers truly is "a crime of the highest order; it is an extreme form of abuse of power against vulnerable and marginalised individuals carried out by those brought in to protect those very populations".<sup>11</sup> The UN has, over the course of the past fifteen years, developed a framework to address SEA, but it remains rather lacklustre.

Near-parallel to the SEA response framework, the UN developed the Women, Peace and Security (WPS) architecture. WPS consists of nine UNSC resolutions issued over the course of the last two decades: resolutions 1325,<sup>12</sup> 1820,<sup>13</sup> 1888,<sup>14</sup> 1889,<sup>15</sup> 1960,<sup>16</sup> 2106,<sup>17</sup> 2122,<sup>18</sup> 2242,<sup>19</sup> and 2467.<sup>20</sup> Of these resolutions, 1820, 1888, 1960 and 2106 focus exclusively on SGBV, whereas the others look at broader issues of WPS. The aim of these resolutions is to mainstream gender in UN peace-building processes. They address a number of issues summarily divided into the following categories, or pillars: participation, protection, prevention, and relief and recovery.<sup>21</sup>

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<sup>11</sup> REDRESS, *Sexual Exploitation and Abuse in Peacekeeping Operations. Improving Victims' Access to Reparation, Support and Assistance*, September 2017, 4.

<sup>12</sup> UNSC, *Security Council resolution 1325 (2000) [on women and peace and security]*, 31 October 2000, S/RES/1325 (2000).

<sup>13</sup> UNSC, *Security Council resolution 1820 (2008) [on acts of sexual violence against civilians in armed conflicts]*, 19 June 2008, S/RES/1820 (2008).

<sup>14</sup> UNSC, *Security Council resolution 1888 (2009) [on acts of sexual violence against civilians in armed conflicts]*, 30 September 2009.

<sup>15</sup> UNSC, *Security Council resolution 1889 (2009) [on women and peace and security]*, 05 October 2009, S/RES/1889 (2009).

<sup>16</sup> UNSC, *Security Council resolution 1960 (2010) [on women and peace and security]*, 16 December 2010, S/RES/1960 (2010).

<sup>17</sup> UNSC, *Security Council resolution 2106 (2013) [on sexual violence in armed conflict]*, 24 June 2013, S/RES/2106 (2013).

<sup>18</sup> UNSC, *Security Council resolution 2122 (2013) [on women and peace and security]*, 18 October 2013, S/RES/2122 (2013).

<sup>19</sup> UNSC, *Security Council resolution 2242 (2015) [on women and peace and security]*, 13 October 2015, S/RES/2242 (2015).

<sup>20</sup> UNSC, *Security Council resolution 2467 (2019) [on women and peace and security: sexual violence in conflict]*, 23 April 2019, S/RES/2467 (2019).

<sup>21</sup> UN Strategic Results Framework on Women, Peace and Security: 2011-2020, July 2011.



## CHAPTER ONE: Existing UN responses to sexual exploitation and abuse by peacekeepers

Sexual exploitation and abuse (SEA) by UN peacekeepers is a recurring topic of WPS (1.1). The reciprocal, however, is not true, despite these frameworks developing in parallel, along with other UN architectures (1.2). This may be explained by the fact that the UN's SEA policy developed in very specific circumstances (1.3). Likely as a result of the above, the UN appears to have an individualised understanding of SEA (1.4).

### 1.1. Explicit mentions of sexual exploitation and abuse in Women, Peace and Security resolutions

The creation of WPS benefitted from decades of women's advocacy, though it particularly built upon the Beijing Declaration and Platform for Action, which was adopted unanimously in 1995 at the end of the Fourth World Conference on Women: Action for Equality, Development and Peace. The Beijing Declaration's area of concern include, among others, women and armed conflict,<sup>22</sup> women in power and decision-making,<sup>23</sup> and institutional mechanisms for the advancement of women,<sup>24</sup> thus laying out a foundation for WPS to piggyback off of. WPS and the Declaration mutually reinforce one another;<sup>25</sup> the relationship between the two might therefore be described as symbiotic.

In WPS, four of the nine resolutions make explicit reference to SEA by peacekeepers:

- S/RES/1820, "*Requests* the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations; and *urges* troop and police contributing countries to take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel;"<sup>26</sup>
- S/RES/1888 reiterates the same wording exactly;<sup>27</sup>
- S/RES/1960, "*Requests* the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance on sexual exploitation and abuse by United Nations peacekeeping and humanitarian personnel, and *further requests* the Secretary-General to continue to provide and deploy guidance on addressing sexual violence for predeployment and inductive training of military and police

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<sup>22</sup> 131-149.

<sup>23</sup> 181-195.

<sup>24</sup> 196-209.

<sup>25</sup> UN Women, Peace Operations Training Institute, "Implementation of the UN Security Council Resolutions on the Women, Peace, and Security Agenda in Asia and the Pacific", 2014.

<sup>26</sup> S/RES/1820 (2008), §7.

<sup>27</sup> S/RES/1888 (2009), §21.

personnel, and to assist missions in developing situation-specific procedures to address sexual violence at the field level and to ensure that technical support is provided to troop and police contributing countries in order to include guidance for military and police personnel on addressing sexual violence in predeployment and induction training;"<sup>28</sup>

The above provisions are, unsurprisingly, contained in WPS resolutions on SGBV. The latest mention to date of SEA by peacekeepers, however, is found in S/RES/2242, which provides as follows:

"9. *Expresses* deep concern over continuing allegations of sexual exploitation and abuse by United Nations peacekeepers and non-United Nations forces, including military, civilian and police personnel, urges police- and troop-contributing countries to provide robust pre-deployment training on sexual exploitation and abuse and vetting of their peacekeeping personnel, to conduct swift and thorough investigations of their uniformed personnel and, if appropriate, to prosecute and to inform the United Nations in a timely manner of the status and outcome of investigations, *calls upon* the United Nations to cooperate as appropriate and in a timely manner with national authorities, including courts responsible for investigating such allegations, when requested for that purpose, and *requests* United Nations troop- and police-contributing country meeting to address sexual exploitation and abuse whenever relevant and the United Nations Military Staff Committee to discuss these issues as part of its regular programme;

10. *Welcomes* the Secretary-General's continued efforts at implementing his policy of zero tolerance of misconduct, in particular the wide ranging proposals on prevention, enforcement and remedial action which promote greater accountability, including his commitment to bring to public light misconduct by United Nations personnel, as well as his proposal to keep the Security Council informed of developments regarding implementation of his zero tolerance policy on sexual exploitation and abuse, and his decision that all countries repeatedly listed in the annexes of his reports on Children and Armed Conflict and Sexual Violence in Conflict are prohibited from participating in United Nations peacekeeping operations, and *urges* those troop- and police-contributing countries that are currently listed to cease such violations and implement action plans expeditiously, thereby avoiding suspension from peace operations, *further requests* the Secretary-General to include a section

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<sup>28</sup> S/RES/1960 (2010), §16.

on conduct and discipline including, whenever relevant, adherence to his zero tolerance policy on sexual exploitation and abuse, in all his reports on country-specific situations to the Security Council".<sup>29</sup>

Interestingly, S/RES/2242's main focus is not SGBV but the participation of women in counter-terrorist policies: it explicitly links WPS and counter-terrorism,<sup>30</sup> making it stand out in comparison with the other WPS resolutions. This makes the inclusion above provisions even more note-worthy, especially considering that they make up the most comprehensive approach to SEA in all WPS resolutions. The language in S/RES/2242 is much stronger and more detailed than that used in the previous three cases, in particular regarding what is expected of troop- and police-contributing States. It also mentions the steps undertaken by the UNSG to address SEA, such as the "policy of zero tolerance of misconduct", or its naming and shaming approach, thereby placing SEA policy under the purview of WPS. Similarly, the mention of the Children and Armed Conflict (CaAC) agenda makes it clear that, at least from a WPS perspective, SEA by peacekeepers is a cross-cutting issue.

## 1.2. Women, Peace and Security and other relevant frameworks

Parallel to the birth and development of WPS, the UN established other frameworks. Of particular interest in light of this analysis are the Protection of Civilians (POC) agenda, and the Children and Armed Conflict (CaAC) agenda: some of the issues these agendas address are cross-cutting and can be found in WPS as well. All three of these architectures, as well as the UN's human rights framework more broadly, are "more explicitly intersectional and human rights-based than SEA policy".<sup>31</sup> It is therefore worth providing an overview of the ways in which the other architectures interoperate with WPS as they could be equally beneficial in improving implementation of SEA policy on the ground.<sup>32</sup> However, the focus of this analysis remains WPS: the others will therefore only be looked at where directly relevant to WPS.

POC is the result of normative shift in 1999, when the Security Council first authorised a peacekeeping mission "to afford protection to civilians under imminent threat of physical violence" in Sierra Leone.<sup>33</sup> This inclusion is the result of "dark period for UN peacekeeping" in the 1990s, over the course of which the UN was unable or failed to address violence against civilians, particularly during the genocide in Rwanda, Srebrenica massacre,

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<sup>29</sup> S/RES/2242 (2015), §9, 10.

<sup>30</sup> S/RES/2242 (2015), §11-15

<sup>31</sup> *Oxford Handbook of WPS*, 232.

<sup>32</sup> For instance, see AIDS-Free World's Code Blue campaign advocating for SEA by peacekeepers to be viewed through the lens of the human rights framework.

<sup>33</sup> UNSC, *Security Council resolution 1270 (1999) [on establishment of the UN Mission in Sierra Leone (UNAMSIL)]*, 22 October 1999, S/RES/1270 (1999), §14.

and crisis in Somalia.<sup>34</sup> The POC agenda's focus, per its name, is protection, which is also one of the pillars of WPS. These agendas are interlinked and have been from the inception of WPS. S/RES/1325 mentions the UN's concern for "civilians, particularly for women and children";<sup>35</sup> it then flips matters around and speaks of "the protection of women and girls, especially as civilians",<sup>36</sup> therefore linking the POC and WPS agendas from all aspects of the question. From the perspective of POC, the interconnectedness is less obvious: "POC has primarily meant the authorisation to use force at the tactical level to protect civilians under imminent threat of physical violence within the mission's area of deployment. As such, it is a gender-neutral concept".<sup>37</sup> However, analysis of "the way protection is discussed in the Security Council meetings suggest that it is a gendered concept in the sense that 'innocent civilians' is often taken to mean 'women and children'". Furthermore, the mandates of UN peacekeeping missions, for instance those of the UN Organisation Stabilisation Mission in the DRC (MONUSCO) and UN Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA), include a much more gendered understanding of protection, all of which point to WPS directly influencing the POC agenda.<sup>38</sup>

As with the first POC resolution, the UNSC also issued the first of its eleven resolutions on CaAC in 1999,<sup>39</sup> though UNGA had already begun discussions on the matter in 1996.<sup>40</sup> WPS and the CaAC agenda are interconnected in a similar manner to WPS and POC. CaAC resolutions include a focus on gender, most notably resolution 1314 which predates resolution 1325 by about two months and called upon regional and subregional organisations to "Integrate a gender perspective into all policies, programmes and projects".<sup>41</sup> Other than this, CaAC resolutions mostly integrate issues of gender through the lens of SGBV and/or conflict-related sexual violence (CRSV), which WPS does as well.<sup>42</sup> As for WPS, it includes multiple references to children/child (mentioned 55 times over nine resolutions), girls (mentioned 81 times), and, on a few occasions, most of them

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<sup>34</sup> Lisa Hultman, Angela Muvumba Sellström, "WPS and Protection of Civilians" in Sara E. Davies, Jacqui True (ed.), *The Oxford Handbook of Women, Peace and Security*, Oxford University Press, 2019, 226., 599.

<sup>35</sup> S/RES/1325 (2000), 1.

<sup>36</sup> *Ibid*, §9.

<sup>37</sup> *Oxford Handbook of WPS*, 600.

<sup>38</sup> *Idem*.

<sup>39</sup> UNSC, *Security Council resolution 1261 (1999) [on children in armed conflicts]*, 25 August 1999, S/RES/1261 (1999).

<sup>40</sup> UNGA, *Impact of armed conflict on children: note / by the Secretary-General*, 26 August 1996, A/51/306.

<sup>41</sup> UNSC, *Security Council resolution 1314 (2000) [on the protection of children in situations of armed conflict]*, 11 August 2000, S/RES/1314 (2000), §16(e).

<sup>42</sup> Katrina Lee-Koo, "WPS, Children, and Armed Conflict" in *Oxford Handbook of WPS*, 613.

recent, boys (mentioned 7 times). Much like POC, mentions of children in WPS generally fall under the protection pillar, though some are included in the relief and recovery pillar.<sup>43</sup>

The CaAC agenda gradually shifted towards gender neutral language; "after 2004 there are no specific references to girls as uniquely or particularly vulnerable groups of children in conflict. Indicative of this, subsequent resolutions which 'condemn rape and other forms of sexual violence' do so not against women and/or girls but '*against children*' (emphasis added)".<sup>44</sup> By contrast, WPS tends to group women and children/girls together, even in its most recent resolutions; feminist scholars have criticised this as an "old paternalist position that *equates* women and children – to the extent of running them together or combining them such that [...] they are seen as a single entity".<sup>45</sup> While the focus of this analysis is how in-silo development has affected the UN's zero-tolerance policy on SEA, it is worth noting that the in-silo development of other frameworks also impacts WPS: the inclusion of items in its mandate that are already covered by other UN agendas can be argued to be detrimental to WPS's efficiency. In the case of children, CaAC also happens to have a much stronger institutional framework than WPS, and can therefore ensure better compliance with its resolutions.<sup>46</sup> One might then argue that children who fall under the purview of WPS and CaAC is especially problematic: if the issue is already addressed elsewhere, any WPS resources allocated for this purpose might be better used to deal with one of the other items included in its extensive mandate.

The matter of WPS lumping women and children together is worth addressing here, independent of the CaAC agenda. For an agenda that aims and claims to provide support for women's empowerment, constantly likening them to children is decidedly not a good place to start: at best, this infantilises women; at worst, it leads to the perception that they "have no agency, skill or, potentially, moral right to engage in public sphere activity [...]".<sup>47</sup> Either way, feminist scholars argue that this "has reinforced exclusionary practices that have culminated in women's absence from global peace and security activities and supported the overwhelming emphasis shown in the WPS agenda upon protection over participation",<sup>48</sup> something that this dissertation looks into in further detail in the section on protection. There is something deeply counterintuitive to the framework set up to ensure

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<sup>43</sup> For example, S/RES/1889 (2009), §7.

<sup>44</sup> *Oxford Handbook of WPS*, 613.

<sup>45</sup> Erica Burman, "Beyond 'Women vs. Children' or 'WomenandChildren': Engendering Childhood and Reformulating Motherhood" in *The International Journal of Children's Rights*, vol. 16, no. 2, 01 January 2008, 177-194, 180.

<sup>46</sup> *Oxford Handbook of WPS*, 611.

<sup>47</sup> *Oxford Handbook of WPS*, 614.

<sup>48</sup> *Idem*.

women's empowerment and better their current situation actually bolstering the clearly biased in favour of men *status quo*.

### 1.3. UN responses to sexual exploitation and abuse: constant reaction

The issue of SEA first came to light with the UN Transitional Authority in Cambodia (UNTAC), "when the number of prostitutes in Cambodia rose from 6,000 before the mission to more than 25,000 in 1993".<sup>49</sup> Addressing the root causes of SEA in order to prevent it from happening, or holding peacekeepers who engaged in such behaviour accountable, was not on the agenda at the time: the UN's response – sending condoms to limit the spread of HIV and asking peacekeepers to avoid visiting brothels in uniform<sup>50</sup> – demonstrates an intention to sweep things under the carpet and not much else. Further scandals occurred in the following years, among which allegations of peacekeepers frequenting brothels in Bosnia and Herzegovina which were a front for sex trafficking in 1995; widespread SEA in Liberian, Sierra Leonean and Guinean refugee camps between 1999 and 2002.

Rising negative public attention eventually prompted an institutional response. First, in 2002, the Office of Internal Oversight Services (OIOS) investigated the situation in West Africa. The report of the OIOS to the Secretary-General (UNSG) was then published in a General Assembly (UNGA) resolution,<sup>51</sup> in which the Secretary-General declared that "Sexual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for".<sup>52</sup> UNGA adopted a resolution of its own soon afterwards,<sup>53</sup> "*emphasising* the need to create an environment free of sexual exploitation and abuse in humanitarian crises",<sup>54</sup> asking that procedures of reporting and investigating be put in place, and calling for perpetrators to be brought to justice. The resolution also made addressing SEA the Secretary-General's prerogative by requesting that he "maintain data on investigations into sexual exploitation and related offences, irrespective of

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<sup>49</sup> Jasmine Kim-Westendorf, Louise Searle, "Sexual exploitation and abuse in peace operations: trends, policy responses and future directions" in *International Affairs*, vol. 93, issue 2, 01 March 2017, 365-387, 366.

<sup>50</sup> *Idem*.

<sup>51</sup> UNGA, *Investigation into sexual exploitation of refugees by aid workers in West Africa: Note by the Secretary-General*, 11 October 2002, A/57/465.

<sup>52</sup> *Idem*, 1.

<sup>53</sup> UNGA, *Investigation into sexual exploitation of refugees by aid workers in West Africa: Resolution adopted by the General Assembly*, 22 May 2003, A/RES/57/306.

<sup>54</sup> *Ibid*, §4.

age and gender, by humanitarian and peacekeeping personnel, and all relevant actions taken thereon",<sup>55</sup> and that he issue a bulletin on the matter.<sup>56</sup>

The Secretariat issued said bulletin, also known as the 'zero tolerance policy', on October 15<sup>th</sup>, 2003;<sup>57</sup> it entered into force on the same day. It defines sexual exploitation 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".<sup>58</sup> Sexual abuse is "the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions".<sup>59</sup> The bulletin then goes on to detail specific prohibited behaviours, such as sexual activity with minors, or exchanging "money, goods or services for sex".<sup>60</sup> Mission leadership is in charge of holding perpetrators accountable, though the bulletin does not specify precisely how that is to be done beyond mentioning that "appropriate measures" ought to be taken, among which summary dismissal is such a measure.

The bulletin did not lead to the problem disappearing. The UN faced further allegations of SEA in Burundi and the Democratic Republic of Congo (DRC) in its immediate aftermath, leading the OIOS to admit, in 2005, the existence of a "pattern of sexual exploitation by peacekeepers" in DRC.<sup>61</sup> The express acknowledgement of the issue, in those terms, has led some scholars to describe it as a "turning point in the UN Department of Peacekeeping Operations' (DPKO) response to allegations of sexual misconduct involving its personnel".<sup>62</sup> The UNSG issued a report of his own (the Zeid report) in response to the situation in DRC per the request of the Special Committee on Peacekeeping Operations.<sup>63</sup> It provides a comprehensive strategy to eliminate future SEA by focusing on four main areas: "rules on standards of conduct; the investigative process; organisational, managerial and command responsibility; and individual disciplinary, financial, and criminal accountability".<sup>64</sup>

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<sup>55</sup> Ibid, §10

<sup>56</sup> Ibid, §12.

<sup>57</sup> UNSG, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Abuse*, 09 October 2003, ST/SGB/2003/13.

<sup>58</sup> Ibid, Section 1.

<sup>59</sup> Idem.

<sup>60</sup> Ibid, section 3, §3.2(b), (c).

<sup>61</sup> UN OIOS, *Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organisation Mission in the Democratic Republic of the Congo*, 05 January 2005, A/59/661, 2.

<sup>62</sup> Anna Shotton, "A Strategy to Address Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel" in *Cornell International Law Journal*, vol. 39, 2006, 97-106, 97.

<sup>63</sup> UNGA, *Report of the Secretary-General's Special Advisor, Prince Zeid Ra'ad Zeid Al-Husseini, on a Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, 24 March 2005, A/59/710.

<sup>64</sup> Jasmine-Kim Westendorf, "WPS and SEA in Peacekeeping Operations" in *Oxford Handbook of WPS*, 226.

These examples show that the UN's approach to SEA is, overwhelmingly, one that focuses on investigation of individual conduct, which is a point this analysis will return to in further detail later.

Yet despite a substantial list of policy documents aiming to address the issue, the framework remains mostly inefficient. SEA by peacekeepers made the headlines again in 2007, this time in UN Stabilisation Mission in Haiti (MINUSTAH). Over ten percent of the Sri Lankan contingent, the third largest troop-contributing country (TCC) to MINUSTAH, was implicated in allegations of SEA, a significant amount of which involved minors.<sup>65</sup>

In 2010, the Inter-Agency Standing Committee (IASC) undertook a global review<sup>66</sup> of SEA policy implementation since the situation in refugee camps in West Africa. Its conclusions were unforgiving: policy development had "not translated into managerial and staff understanding of these policies", particularly in the field; implementation was "patchy, poor or non-existent"; and, critically, there was a visible lack of senior management leadership promotion of existing policies despite them being accountable for implementation.<sup>67</sup> No significant change came from this report in its immediate aftermath; though disappointing, this does not come as a surprise in light of the historical precedent presented here.

In 2015, it was discovered that peacekeepers deployed in Central African Republic (CAR) and in Haiti had sexually abused children aged 8-15 in exchange for food and/or money. This time, the cause for scandal was not so much the events that had occurred in the field, but rather the way the UN dealt with and appeared to cover them up: "information [...] was passed from desk to desk, inbox to inbox, across multiple UN offices, with no one willing to take responsibility to address the serious human rights violations. Staff [...] focused on protocols rather than action. The welfare of the victims and the accountability of the perpetrators appeared to be an afterthought, if considered at all. Overall, the response of the UN was fragmented and bureaucratic".<sup>68</sup> Furthermore, the UN only began addressing the issue in 2015, well after human rights officers had first raised the alarm, in spring 2014, regarding the conduct of peacekeepers. It is no surprise that this was described as

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<sup>65</sup> UN News, "Haiti: Over 100 Sri Lankan blue helmets repatriated on disciplinary grounds", <https://news.un.org/en/story/2007/11/238162-haiti-over-100-sri-lankan-blue-helmets-repatriated-disciplinary-grounds-un>, 02 November 2007, accessed 26 August 2019.

<sup>66</sup> IASC, *Global Review of Protection from Sexual Exploitation and Abuse by UN, NGO, IOM and IFRC Personnel*, July 2010.

<sup>67</sup> IASC Review, 3.

<sup>68</sup> Marie Deschamps, Hassan B. Jallow, Yasmin Sooka, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers. Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic*, 17 December 2015, i.

"a gross institutional failure",<sup>69</sup> especially as the UN's policy response to SEA was, at least on paper, well established by then.

Some scholars argue that these events caused a shift in approach to SEA, mostly in light of the UNSG's declarations on the situation in CAR, wherein he declared TCCs "squarely" responsible for ensuring justice.<sup>70</sup> However, it is this author's belief that calling this a shift is overstating the matter. Scholars made similar claims in 2005 following the response to the situation in Burundi and DRC, yet it did not lead to any changes in practice. Therein lays the crux of the issue: all of these declarations, though invaluable, have hardly led to people on the ground being better protected against SEA by peacekeepers. When António Guterres was appointed new UNSG, he spoke of working on "structural, legal and operational measures to make the zero-tolerance policy [...] a reality",<sup>71</sup> thereby illustrating the still-theoretical nature of the policy despite over a decade of work – and despite two years having passed since the CAR crisis.

What emerges from the above analysis is the consistent reactive rather than proactive development of UN SEA policy. This may, in part, explain its continued lack of effectiveness in practice, particularly from an implementation perspective.

#### **1.4. The UN's individualised understanding of sexual exploitation and abuse**

SEA policy developing in isolation may be another explanation for its ineffectiveness. Indeed, what is striking about the UN's response to SEA is the way it appears to have been developed in isolation, with little to no regard for other existing UN frameworks developed in parallel mentioned in 1.2.

Despite other architectures highlighting the interconnectedness of the issue, developments in SEA policy continued to occur mostly in silo. The adoption of S/RES/2272,<sup>72</sup> for example, is interesting in this regard: it is an SEA-focused resolution that exists outside all the frameworks described above, yet with clear links to them. It provides for the repatriation of peacekeeping military or police units where there is "credible evidence of widespread or systematic" SEA by said units;<sup>73</sup> here, there are similarities to the content of S/RES/2242

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<sup>69</sup> Ibid, v.

<sup>70</sup> *Oxford Handbook of WPS*, 228.

<sup>71</sup> UNSG, "Secretary-General-designate António Guterres' remarks to the General Assembly on taking the oath of office, 12 December 2016, <https://www.un.org/sg/en/content/sg/speeches/2016-12-12/secretary-general-designate-ant%C3%B3nio-guterres-oath-office-speech>, accessed 04 August 2019.

<sup>72</sup> UNSC, *Security Council resolution 2272 (2016) [on sexual exploitation and abuse by United Nations peacekeepers]*, 11 March 2016, S/RES/2272.

<sup>73</sup> S/RES/2272, §1.

regarding the UNSG's power to suspend contingents engaging in SEA from peace operations. It goes on to draw even more explicit links between the various frameworks, concluding that "appropriate United Nations mechanisms, including those related to Children and Armed Conflict, Women, Peace and Security, and the Office of the High Commissioner for Human Rights [should] continue to include allegations of sexual exploitation and abuse in their regular reporting to the Secretary-General".<sup>74</sup> The fact, then, that these links are ignored from an operational standpoint makes no sense.

There is a parallel to be drawn between the development of policy responses to SEA in isolation and the fact that these policy responses "reflect an individualised understanding of SEA".<sup>75</sup> Determining which causes the other is a case of whether the chicken came before the egg or vice versa and does not much serve our purpose: whatever the degree of causality, it is undeniable that on the one hand, SEA policy was consistently developed in a bubble, in response to UN peacekeepers committing these acts, and on the other, that SEA was long perceived as a problem unrelated to broader issues of gender.

There exists an inaccurate underlying assumption that troop-contributing countries that send personnel to peace operations do so with some great moral objective in mind. The corollary of this notion is that peacekeepers are inherently above committing SEA and that when they do, the issue is one of a few 'bad apples'.<sup>76</sup> Official UN documents have very explicitly embraced this mindset. The Zeid report, for instance, which is the cornerstone of the UN's SEA framework and continues to shape it to this day, opens with the following statement: "United Nations peacekeeping operations have for decades brought peace and stability to countries emerging from war. The women and men who serve the blue flag do so under arduous and often dangerous conditions. The history of peacekeeping has been one of distinguished collective accomplishment and personal sacrifice. *However, this exemplary record has been clouded by the unconscionable conduct of a few individuals*" (emphasis added).<sup>77</sup> Other scholars, on the contrary, have argued that "the root of the problem is that peacekeepers are fully aware of the power disparities, and use these disparities and their relative positions of power of vulnerable local populations to their advantage to perpetrate the abuses".<sup>78</sup>

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<sup>74</sup> Ibid, §13.

<sup>75</sup> *Oxford Handbook of WPS*, 299.

<sup>76</sup> Mallory C. Hale, "Liability, Responsibility, and Sexual Exploitation and Abuse: The Problematic Implications of United Nations Discourse for Addressing Sexual Exploitation and Abuse by UN Personnel", *Undergraduate Honors Theses*, University of Colorado, Boulder, 2019, 1982, 21.

<sup>77</sup> Zeid report, 1.

<sup>78</sup> REDRESS, *ibid* n (11), 6.

The UN's philosophy, which rejects the latter approach in favour of the former, explains why most of its SEA policies focus on targeting "individual compliance primarily through standards of conduct, recruitment standards and training, and threats of punishment".<sup>79</sup> We will return to the modalities of this response in more detail later.

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<sup>79</sup> *Oxford Handbook of WPS*, 229.

## CHAPTER TWO: Addressing sexual exploitation and abuse by peacekeepers via the participation pillar

This chapter first looks at the way WPS defines, perceives, and promotes participation (2.1). It then spotlights a particular aspect of participation, that of women in peace operations (2.2), which proves to be a way to ensure better protection (2.3).

### 2.1. Participation in Women, Peace and Security: general remarks

Participation, per the 2011 Strategic Results Framework, means that "Women participate equally with men and gender equality is promoted in peace and security decision-making processes at national, local, regional and international levels".<sup>80</sup> This idea is rooted in the fact that women represent over half of the world's population and should be equally involved in such processes. The insistence on women's participation at all levels nationally is especially important if we are to use WPS to address SEA, given TCCs' responsibility for holding peacekeepers accountable.

Participation is presented as a way to guarantee the other WPS pillars. S/RES/1325 speaks of "the important role of women in the prevention and resolution of conflicts and in peacebuilding",<sup>81</sup> as does S/RES/1820;<sup>82</sup> S/RES/1889 of their "vital role in the prevention and resolution of conflict and peacebuilding" and of the "key role women can play in re-establishing the fabric of recovering society".<sup>83</sup> The underlying rationale is that the more women involved at all levels of peacebuilding processes, the stronger said processes. The UN officially advertises this position, claiming for example that "Women's participation in peace negotiations increases the durability and the quality of peace".<sup>84</sup> This might be an oversimplification: while "there are suggested correlations between the organised participation of women's groups and greater attentiveness to gender in the resulting text of the agreement",<sup>85</sup> correlation does not imply causation.

Improving women's participation was long limited to simply increasing the number of women present – counting women rather than making women count,<sup>86</sup> also known as the tendency to just "add women and stir"<sup>87</sup> – at all

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<sup>80</sup> UN Strategic Results Framework on WPS, 1.

<sup>81</sup> S/RES/1325 (2000), 1.

<sup>82</sup> S/RES/1820 (2008), 2.

<sup>83</sup> S/RES/1889 (2009), 1.

<sup>84</sup> UN Women, Facts and figures: Peace and security: Women's meaningful participation in peace processes, [http://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures#\\_Meaningful\\_participation](http://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures#_Meaningful_participation), October 2018, accessed 21 July 2019.

<sup>85</sup> Duncanson, 106-107.

<sup>86</sup> Thania Paffenholz, "What Works in Participation" in *Oxford Handbook of WPS*, 149.

<sup>87</sup> Sahana Dharmapuri, "Just Add Women and Stir?" in *Parameters Quarterly*, Spring 2011, 56-70.

levels of decision-making, with a particular focus on peacebuilding.<sup>88</sup> WPS resolutions appear to consider this the solution to the underrepresentation of women in such processes, which is noted with "deep concern".<sup>89</sup> The resolutions also require the Secretary-General to be an actor of the solution, specifically requiring, in addition to the above,<sup>90</sup> that they appoint more women in senior positions within the UN, such as special representatives, envoys and mediators;<sup>91</sup> the inclusion of more women in UN field operations,<sup>92</sup> in the security and justice sectors at a national level.<sup>93</sup> A 2012 study analysed the 31 major peace processes from 1992 to 2011 with available data and found that women made up 4% of signatories, 2.4% of chief mediators, 3.7% of witnesses and 9% of negotiators.<sup>94</sup> The most recent data, from 2017, provided the same statistics,<sup>95</sup> thus illustrating the lack of progress. This was also acknowledged by WPS itself: S/RES/2242 commented on the Secretary-General's "commitment to prioritise the appointment of more women in senior UN leadership positions".<sup>96</sup> The inclusion of the phrase clearly indicates that the matter was still an issue fifteen years after S/RES/1325.

There has however been a slow shift, *a minima* in vernacular, probably linked to the amount of academic attention paid to the question, that is worth commending: the focus is now on meaningful participation rather than just participation.<sup>97</sup> Resolution 2122 marked a step in the right direction. Along with the UNSG's 7-Point Action Plan (7-PAP),<sup>98</sup> it was "adopted in part as a response to feminist concerns that that the participation pillar of women was being neglected in comparison to their protection. Both place emphasis on the importance of including women and gender analyses in order to reach a sustainable and inclusive peace."<sup>99</sup> It focuses on participation in a lot more detail than any of the previous resolutions save for S/RES/1889, but even that focused exclusively on women's participation in "all stages of peace processes, particularly in conflict resolution, post-

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<sup>88</sup> S/RES/1325 (2000), §1; S/RES/1888 (2009), §16; S/RES/1889 (2009), §1; S/RES/2122 (2013), §7(c); S/RES/2242 (2015), §1.

<sup>89</sup> S/RES/1888 (2009), 2; S/RES/1889 (2009), 2; S/RES/2242 (2015), 3; S/RES/2467 (2019), 2.

<sup>90</sup> S/RES/1889 (2009), §15.

<sup>91</sup> S/RES/1325 (2000), §3; S/RES/1889 (2009), 2; S/RES/1888 (2009), §16; S/RES/2122 (2013), §7(c).

<sup>92</sup> S/RES/1325 (2000), §4; S/RES/1960 (2010), §10.

<sup>93</sup> S/RES/2106 (2013), §16(b), §16(c).

<sup>94</sup> UN Women, "Women's Participation in Peace Negotiations: Connections between Presence and Influence", October 2012, 3.

<sup>95</sup> Council on Foreign Relations, Women's Participation in Peace Processes: Women's Roles in Major Peace Processes, 1992-2017, <https://www.cfr.org/interactive/interactive/womens-participation-in-peace-processes>, 30 January 2019, accessed 23 July 2019.

<sup>96</sup> S/RES/2242 (2015), §8.

<sup>97</sup> S/RES/2122 (2013), §14.

<sup>98</sup> UNSG, "Tracking Progress: 7-Point Action Plan", *Women's participation in peacebuilding: report of the Secretary-General*, 07 September 2010, A/65/354-S/2010/466.

<sup>99</sup> Duncansson, 105.

conflict planning and peacebuilding".<sup>100</sup> S/RES/2122 goes beyond that and provides a much more in-depth manner look at the issue, for example listing specific areas in which women's participation should be facilitated in conflict or post-conflict situations ("election preparation and political processes, disarmament, demobilisation and reintegration programs, security sector and judicial reforms, and wider post-conflict reconstruction processes").<sup>101</sup> It further marks a turning point as it gives women agency by requiring that they participate, where previous resolutions only requested that such processes take the needs of women into account. To achieve this, it encourages Member States to "develop dedicated funding mechanisms to support the work and enhance capacities of organisations that support women's leadership development and full participation in all levels of decision-making", which is also a new development.<sup>102</sup>

S/RES/2122 also goes beyond previous resolutions in encouraging women's "equal and full participation" at all decision-making levels.<sup>103</sup> Again, the resolution sets out specific requests in order to achieve this. For example, it "*Requests* the Secretary-General's Special Envoys and Special Representatives to United Nations missions, from early on in their development, to regularly consult with women's organisation and women leaders, including socially and/or economically excluded groups of women".<sup>104</sup> This explicit mention of sub-categories within the previously monolithic concept of 'women' marks a huge shift. It challenges the representation of women as one homogenous group with the same needs and expectations established prior, for example in resolution 1325, which "does not address the intersection of gender with other vectors of privilege and marginalisation [e.g.] race, ethnicity, sexuality, physical ability and religious privilege, and how this manifests in specific post-conflict communities".<sup>105</sup> Later resolutions have reiterated the WPS's focus on meaningful participation,<sup>106</sup> though not in as much detail as S/RES/2122. Unfortunately, we still lack the necessary hindsight to assess whether the switch to meaningful participation on paper changes anything in practice.

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<sup>100</sup> S/RES/1889 (2009), §1.

<sup>101</sup> S/RES/2122 (2013), §4.

<sup>102</sup> S/RES/2122 (2013), §7(b).

<sup>103</sup> S/RES/2122 (2013), §7(c), §8.

<sup>104</sup> S/RES/2122 (2013), §7(a).

<sup>105</sup> Gina Heathcote, Dianne Otto (ed.), *Rethinking Peacekeeping, Gender Equality and Collective Security*, Palgrave Macmillan, 2014, 52-53.

<sup>106</sup> S/RES/2242 (2015), §1, §16; S/RES/2467 (2019), 1, 3, §16(d), §20, §30.

## 2.2. Women in UN peace operations: one facet of participation

In 2015, former UNSG Ban Ki-moon described peacekeeping as one the "most persistently challenging [areas] for ensuring women's equal and meaningful participation".<sup>107</sup> This was not a particularly innovative statement: increasing women's participation in peacekeeping operations, especially as military or police personnel, has been a concern even prior to the establishment of WPS. A variety of actors, from "women's organisation, civil society, feminist scholars, as well as the UN" itself, pushed this agenda on the basis that peacekeeping missions with higher percentages of women involved were more successful.<sup>108</sup> Provisions included in subsequent WPS resolutions reflect this mindset. In addition to requesting the UNSG to "provide Member States training guidelines and materials [...] on the importance of involving women in all peacekeeping measures",<sup>109</sup> WPS specifically "*Encourages* Member States to deploy greater numbers of female military and police personnel to United Nations peacekeeping operations" on three separate occasions.<sup>110</sup> In 2015, the language changed to include a specific, numerical requirement. S/RES/2242 "*calls upon* the Secretary-General to initiate, in collaboration with Member States, a revised strategy, within existing resources, to double the numbers of women in military and police contingents over the next five years".<sup>111</sup>

Parallel to WPS developments, DPKO adopted a policy directive on gender equality.<sup>112</sup> This document clearly links peacekeeping and WPS, calling for the "development of National Action Plans for the Implementation of SCR 1325 (2000) on Women Peace and Security" as an element of DPKO policy implementation. The directive establishes principles underlying its work for gender equality. Some of these principles seem to be lifted directly from WPS, for instance "The principle of inclusiveness, which requires that peacekeepers consult with both women and men in post conflict countries in all decisions that affect them [...] The principle of standard-setting, which requires that the staffing profile of DPKO and United Nations peacekeeping missions role model our institutional commitments to gender balance and the equal participation of women in decision-making".<sup>113</sup> The mention of institutional commitments can also be understood to refer back to the Beijing Declaration, which further proves the above point as it lay the foundation for WPS. All of this provides yet another textual basis in favour of the interconnectedness of both frameworks, lending further credence to the possibility of addressing

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<sup>107</sup> UN Women, *Preventing Conflict Transforming Justice Securing the Peace – A Global Study on the Implementation of United Nations Security Council resolution 1325*, 12 October 2015, 14.

<sup>108</sup> Nastasja Rupesinghe, Eli Stamnes, John Karlsrud, "WPS and Female Peacekeepers" in *Oxford Handbook of WPS*, 207.

<sup>109</sup> S/RES/1325 (2000), §6.

<sup>110</sup> S/RES/1888 (2009), §19; S/RES/1960 (2010), §15; S/RES/2122 (2013), §9.

<sup>111</sup> S/RES/2242 (2015), §8.

<sup>112</sup> DPKO, *Policy Directive: Gender Equality in UN Peacekeeping Operations*, November 2006.

<sup>113</sup> DPKO Directive, §7.

SEA by peacekeepers *via* WPS. In addition to the directive, DPKO launched a campaign in 2009 -at the same time as the UNSC issued the first WPS resolution encouraging States to deploy more women police and military personnel- to promote the recruitment of women police officers in peacekeeping and increase their numbers to 20 percent by 2014.<sup>114</sup>

UNSG Guterres further drove, in 2017, a system-wide gender parity strategy that includes a specific focus on "field settings, with emphasis within this on peace operations [...] where the gaps in gender balance, as well as the challenges in addressing this, are the greatest".<sup>115</sup> Per his 2018 Report on WPS, the latest one to date, women represented 4 percent and 10 percent of military and police personnel respectively in December 2017.<sup>116</sup> By contrast, women represent over 30 percent of international civilian staff (though only 7 percent of local level staff).<sup>117</sup> On a more positive note, women also made up 41 percent of heads and deputy heads of DPKO and Department of Political Affairs (DPA)-led peace operations, which marked a 13-percentage point increase from 2017, and the UNSG appointed, for the first time, a woman as head of the DPA.<sup>118</sup> However, women only led 3 of 16 police components in July 2018, and there was a single woman military Force Commander, at the head of the UN Truce Supervision Organisation.<sup>119</sup> The latest numbers, comparatively speaking, are cause for hope: as of 31 July 2019, women make up almost 5 and 15 percent of military and police troops respectively,<sup>120</sup> a sizeable improvement since the UNSG's latest report.

Though we can commend the progress made, the number of women peacekeepers, all things considered, remains disappointingly low, especially when it comes to senior positions in the field. Per UNSG Guterres' 2018 report, the "reality in [...] peace operations is that the number of women at all levels has stagnated, and is at risk of decreasing in the coming years through the imminent downsizing of several missions".<sup>121</sup> Based on his analysis, S/RES/2242's goal of doubling the number of women peacekeepers in five years therefore seems rather unlikely to be met, even with there still being a year to the target deadline, especially as the UNSC

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<sup>114</sup> UN Press Release, "United Nations in Global Effort to Increase Number of Female Police in Peacekeeping Operations", 07 August 2009, PKO/218-WOM/1751, <https://www.un.org/press/en/2009/pko218.doc.htm>, accessed 16 August 2019.

<sup>115</sup> UNSG, *System-Wide Strategy on Gender Parity*, 06 October 2017, 6.

<sup>116</sup> UNSC, *Report of the Secretary-General on women and peace and security*, 09 October 2018, S/2018/900, §12.

<sup>117</sup> UNSG 2018 WPS Report, §11.

<sup>118</sup> UNSG 2018 WPS Report, §9.

<sup>119</sup> UNSG 2018 WPS Report, §12.

<sup>120</sup> UN Peacekeeping, *Summary of Troop Contributions to UN Peacekeeping Operations by Mission, Post and Gender. Police, UN Military Experts on Mission, Staff Offices and Troops*, 31 July 2019, <https://peacekeeping.un.org/en/gender>, accessed 18 August 2019.

<sup>121</sup> UNSG 2018 WPS Report, §11.

expected this to be done "within existing resources"<sup>122</sup> –that is, without putting forward the budget for this purpose.

There are several explanations to these low numbers. First, the lack of women in national forces or administrations limits appointment possibilities on the international stage, particularly when it comes to senior positions.<sup>123</sup> Regarding troops in the field, deployment is the remit of TCCs – despite the goals set and its calls to increase the participation of women, the UNSC cannot actually enforce the WPS provisions. It is up to Member States to decide to recruit and deploy more women into the military and police, which means that "achieving a gender balance in UN peace operations is largely dependent on the national recruitment policies of TCCs".<sup>124</sup> As it happens, the States with the highest percentages of women in their military and police forces are generally the ones who contribute the least troops. This is the case of European and North American States, for instance, where women make up between 8 and 20 percent of the military, but they "typically contribute more uniformed personnel and civilian staff to NATO, EU, and OSCE missions, rather than UN missions".<sup>125</sup> That said, Ethiopia, Rwanda and Bangladesh, the three major TCCs as of 31 July 2019, have all taken steps over the course of the past few years to improve their gender balance: Ethiopia boasted 6.3 percent of female representation in 2015, almost double the UN average at the time; Rwanda, in addition to the number of women in the army tripling over a decade, set a "target to ensure that at least 30 per cent of their peacekeepers are women"; and the "Bangladesh Air Force launched a process to ensure that at least 20 percent of their officers are women".<sup>126</sup>

Furthermore, although the absence of gender balance within TCCs can be an explanation for the low numbers of women in the field, there is no guaranteed correlation between the two. Rather the opposite, in fact: according to the 2015 Global Study, "the percentage [of women] in missions is typically lower than the percentage in national armed forces".<sup>127</sup> Albania (12 percent of women in the armed forces in 2010, 18 percent by 2015, yet only 1 to 1.5 percent of the peacekeepers deployed by Albania are women) and India (women make up 4 percent of national troops, yet only 1.7 percent of troops deployed in peace operations) are good examples of this trend,<sup>128</sup> which is a result of the prevalence of the "gendered protection" norm,, i.e. "the belief that men

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<sup>122</sup> S/RES/2242 (2015), §8.

<sup>123</sup> UNSG 2018 WPS Report, §13.

<sup>124</sup> *Oxford Handbook of WPS*, 212.

<sup>125</sup> 2015 Global Study, 139.

<sup>126</sup> *Idem*.

<sup>127</sup> 2015 Global Study, 159.

<sup>128</sup> *Idem*.

excel at protection and that women are in greater need of their protection".<sup>129</sup> The gendered norm leads to considerations of safety, security, and cultural factors being taken into account when determining whether to deploy women, and "prevents TCCs from sending women to the most dangerous countries and therefore accounts for variation in deployment patterns of female peacekeepers".<sup>130</sup> It would explain why, by 30 December 2016, women only made up 1.8 percent of the military personnel for MINUSMA,<sup>131</sup> considered the "deadliest peacekeeping mission in the world".<sup>132</sup> It also explains the much higher representation of women in the civilian staff of UN peace operations.

### 2.3. Participation of women peacekeepers, a gateway to protection

As already briefly mentioned above, the participation pillar within WPS tends to be not an end in and of itself, but rather a means to an end, in particular that of achieving protection; the will to increase the participation of women in military and police peacekeeping forces is no exception. WPS resolutions are upfront about the fact that "women's protection and participation are inextricably linked":<sup>133</sup> "women and children affected by armed conflict may feel more secure working with and reporting abuse to women in peacekeeping missions, and that the presence of women peacekeepers may encourage local women to participate in the national armed and security forces, thereby helping to build a security sector that is accessible and responsive to all, especially women";<sup>134</sup> "their presence may encourage women from local communities to report acts of sexual violence";<sup>135</sup> most relevant to our analysis, WPS considers the "deployment of a higher percentage of women peacekeepers or police" to be a way to "prevent sexual violence against women and girls in conflict and post-conflict situations".<sup>136</sup> For this reason, it consistently applauds the inclusion of women deployed in military or police contingents under the banner of the UN and encourages increasing their numbers.<sup>137</sup>

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<sup>129</sup> Sabrina Karim, Kyle Beardsley, "Ladies last: Peacekeeping and gendered protection" in Louise Olsson, Theodora-Ismene Gizelis, *Gender, Peace and Security: Implementing UN Security Council Resolution 1325*, Routledge, 2015, 66.

<sup>130</sup> *Oxford Handbook of WPS*, 212.

<sup>131</sup> *Idem*.

<sup>132</sup> UN Dispatch, "The United Nations Peacekeeping Mission in Mali is on the Front Lines of Fighting Terrorist Groups", 23 January 2019, <https://www.undispatch.com/united-nations-peacekeeping-mission-in-mali-is-on-the-front-lines-of-fighting-terrorist-groups/>, accessed 18 August 2019.

<sup>133</sup> S/RES/2467 (2019), 2.

<sup>134</sup> S/RES/1888 (2009), 2-3.

<sup>135</sup> S/RES/1960 (2010), 3.

<sup>136</sup> S/RES/1820 (2008), §8.

<sup>137</sup> S/RES/1820 (2008), §8; S/RES/1888 (2009), 2, §19; S/RES/1960 (2010), 3, §15; S/RES/2106 (2013), §14; S/RES/2122 (2013), §9; S/RES/2242 (2015), §8.

WPS's provisions in this regard stem directly from the gendered protection norm mentioned in the previous section: "The assumed conciliatory attributes of women, including communication skills, empathy, sensitivity and approachability, are believed to make female peacekeepers more responsive and sensitive to local needs".<sup>138</sup> When physically present in tense situations, for example at checkpoints, the presence women peacekeepers does "reduce levels of aggression and violence", though this is likely more because "they are *perceived* as less of threat than male peacekeepers" than because their gender makes them inherently less confrontational (emphasis added).<sup>139</sup>

The UN Mission in Liberia (UNMIL) makes an excellent case for the argument that women peacekeepers encourage participation in the national security sector (though whether this leads to it being accessible and responsive to all is another matter entirely). It was "one of the first to incorporate components of the WPS agenda in its peacekeeping mandates, and was home to the first all-female formed police units".<sup>140</sup> UNMIL worked with the Liberian National Police (LNP) to create a national gender policy, setting up a Gender Unit and Women and Children's Protection Unit, "helped write a sexual harassment policy for the LNP and provided input for the National Rape Law, among other activities. By 2017, the LNP had 18 percent female offices (compared with 2 percent in 2005), hundreds of officers trained in SGBV, and the security sector on the whole had seen more women in leadership positions than ever before".<sup>141</sup> However, as women's groups in Liberia were already strong actors prior to UNMIL's deployment,<sup>142</sup> one can argue that the environment was conducive to women's increased participation in the security sector anyway, that Liberian women were already seeking to be more involved. Laying the success of the mission exclusively at UNMIL's feet is too simplistic an approach, as is claiming that all-female contingents guarantee the promotion of gender balance.

WPS' claims that deploying more women peacekeepers reduces the risk of SGBV against women and/or leads to higher reporting rates of such acts can be similarly challenged as naive. First of all, there is no empirical evidence to back this claim; on the contrary, "numerous studies indicate that locals are more likely to see the 'uniform' than the gender of the peacekeeper",<sup>143</sup> which proves especially problematic if WPS is to address SEA

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<sup>138</sup> *Oxford Handbook of WPS*, 214.

<sup>139</sup> Lindy Heinecken, "Are Women 'Really' Making a Unique Contribution to Peacekeeping? The Rhetoric and the Reality" in *Journal of International Peacekeeping*, vol. 19, 2015, 227-248, 232.

<sup>140</sup> Sabrina Karim, "Delivering WPS Protection in All Female Peacekeeping Force: The Case of Liberia", in *Oxford Handbook*, 451.

<sup>141</sup> *Oxford Handbook of WPS*, 455.

<sup>142</sup> Alexandra Zetes, "Beyond Passive Victimhood: The Narrative and Reality of Women in Transitional Justice" in *New York University Journal of International Law and Politics*, vol. 48, no. 4, Summer 2016, 1293-1328, 1310-1311.

<sup>143</sup> Heinecken, 236.

by peacekeepers. When they *do* see gender, women seem to prefer to discuss issues pertaining to their security with male peacekeepers, who are "the symbol of protection"<sup>144</sup> – again, the gendered protection norm comes into play. Beyond these more conceptual arguments, realities on the ground also challenge the idea that having more women peacekeepers will decrease the risk of SGBV and increase reporting: women peacekeepers, once deployed, may have limited interactions with locals due to restrictions, for example "not being able to leave the base, not having a vehicle, and being required to travel with men" in the example of UNMIL *supra*, making it difficult for victims to reach out to them in the first place.<sup>145</sup> This is not specific to Liberia.<sup>146</sup>

Some see women peacekeepers as a solution to the problem of SEA by UN personnel, on the grounds that "men behave better when in the presence of women from their own culture".<sup>147</sup> DPKO adheres to a version of this idea – or did in the past, at the very least, claiming in 2000 that "Women's presence [in peacekeeping missions] [...] makes male peacekeepers more reflective and responsible".<sup>148</sup> From a feminist standpoint, this idea results in a frankly unpleasant conclusion, even without addressing the hierarchy it creates between women of the same culture and others, be they local women or women peacekeepers from other States: it essentially puts women peacekeepers in charge of policing their male colleagues' actions (in addition to doing their job), suggesting that men cannot control themselves and require exterior supervision to behave civilly.<sup>149</sup> This is an underlying proponent of contemporary rape culture, in which the burden of responsibility tends to be placed on victims of SGBV rather than perpetrators. In peacekeeping contexts, requiring this of women peacekeepers may "result in additional resentment and discrimination against them", bearing in mind that they are already at risk of violence themselves (including SGBV), committed either by local troops, armed groups, or their male counterparts.<sup>150</sup> Going even further, the presence of women peacekeepers may also increase the risk of violence against peacekeepers in general: cultural norms in the places they are deployed to also mean that locals may consider women's very presence disrespectful, causing armed groups specifically targeting

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<sup>144</sup> Heinecken, 237.

<sup>145</sup> *Oxford Handbook of WPS*, 456.

<sup>146</sup> *Oxford Handbook of WPS*, 216.

<sup>147</sup> Gerard J. DeGroot, "A few good women: Gender stereotypes, the military and peacekeeping" in *Journal of International Peacekeeping*, vol. 8, 2001, 23-38, 37.

<sup>148</sup> DPKO, Lessons Learned Unit, *Mainstreaming a Gender Perspective in Multidimensional Peace Operations*, July 2000, p. iii.

<sup>149</sup> Olivera Simić, "Does the Presence of Women Really Matter? Towards Combating Male Sexual Violence in Peacekeeping Operations" in *Journal of International Peacekeeping*, vol. 17, no. 2, 2010, 188-199, 191.

<sup>150</sup> Heinecken, 235.

peacekeepers known to include women in their ranks. This then puts male peacekeepers in charge of protecting their female counterparts, once again feeding into the gendered protection norm.<sup>151</sup>

Finally, arguably the biggest problem with WPS' rhetoric on women peacekeepers is that it assumes "that the simple act of being a woman will transcend the economic, cultural, linguistic and possibly religious, racial or other ethnic differences and foster open communication based on a kind of shared global sisterhood".<sup>152</sup> Evidence suggests, however, that despite perceptions of women as "physically, psychologically and emotionally less capable of serving on peacekeeping missions in infantry type roles"<sup>153</sup> women "tend to fit into the military hypermasculine environment rather than change it".<sup>154</sup> Military (and police) environments exist in a vacuum that breeds a toxic, "dominant masculinity which cannot succeed without reducing women to feminine roles that are ascribed inferior status and power",<sup>155</sup> and an ensuing culture of silence when it comes to addressing SEA. These environments either quash sensitivity and empathy, or the individuals who continue to demonstrate such traits. With the vast majority of peacekeeping personnel being pulled directly from such environments, expecting a sudden change of mentality simply because individuals are now deployed under the banner of the UN is utopian at best, and foolish at worst, especially when it comes to gender issues. UNMIL, the very same mission lauded for its accomplishments in furthering gender balance, also showed that "women peacekeepers did not display particular empathy to local women simply because [they] were women".<sup>156</sup> Other empirical data suggests that women, much like men, are not particularly willing to report their male colleagues as this can jeopardise their careers, friendships, work environment, etc.,<sup>157</sup> further emphasising the point that women peacekeepers "do not necessarily join missions with the aim of liberating local women in conflict" in the name of sisterhood.<sup>158</sup> Just like men, "many female peacekeepers aspire to join international forces not to improve gender equality, but due to career prospects, attractive income, and other professional benefits",<sup>159</sup> which illustrates how pervasive gender stereotypes are and how damaging they are at every level.

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<sup>151</sup> Heinecken, 245-246.

<sup>152</sup> Kathleen M. Jennings, *Women's participation in UN peacekeeping operations: agents of change or stranded symbols?*, September 2011, 9.

<sup>153</sup> Heinecken, 244.

<sup>154</sup> Simić, 194.

<sup>155</sup> Simić, 189.

<sup>156</sup> Simić, 195.

<sup>157</sup> Kathleen M. Jennings, *Protecting Whom? Approaches to sexual exploitation and abuse in UN peacekeeping operations*, 2008, 30.

<sup>158</sup> *Oxford Handbook of WPS*, 215.

<sup>159</sup> Idem.

Lastly, one must note that despite the WPS' aspirations for women peacekeepers, they are not provided the means to achieve such objectives. The training peacekeepers receive is mostly pure military training (i.e. "shooting, assaulting and marching practices"<sup>160</sup>), despite WPS continuously advocating for UN- and TCC-led gender awareness training (both pre- and in-mission) for all peacekeepers since 2000.<sup>161</sup> Therefore, even in scenarios where female peacekeepers wanted to help, they would likely do so by referring the victim to "the medics or psychologists, or the NGOs that handle such issues – this was not their job. They [see] their role more in terms of protecting women from sexual violence, than dealing with victims of such violence".<sup>162</sup>

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<sup>160</sup> Liora Sion, "Peacekeeping and the Gender Regime" in *Journal of Contemporary Ethnography*, vol. 37, no. 5m 2008, 567.

<sup>161</sup> S/RES/1325 (2000), 2, §6; S/RES/1820 (2008), §6, §8; S/RES/1888 (2009), 3, §19; S/RES/1960 (10), §11, §15; S/RES/2106 (2013), §8, §14; S/RES/2122 (2013), §9; S/RES/2242 (2015), §9; S/RES/2467 (2019), §24.

<sup>162</sup> Heineken, 236-237.

## CHAPTER THREE: Addressing sexual exploitation and abuse by peacekeepers *via* the protection pillar

Here, we will look at the meaning of protection in WPS, how it is defined, and issues with the definition (3.1). Two elements of protection under WPS that could be particularly useful in the context of SEA make up the rest of this chapter: the development of new roles under WPS (3.2) and the fight for accountability for perpetrators of SGBV (3.3).

### 3.1. Protection in Women, Peace and Security: general remarks

Per WPS, parties to the conflict bear the brunt of responsibility for the protection of women and girls in conflict.<sup>163</sup> Outside conflict situations, this responsibility weighs primarily on Member-States (or TCCs specifically),<sup>164</sup> though the UNSG is expected to consult with them and provide the necessary guidelines.<sup>165</sup> Protection is understood to mean that "Women's and girls' rights are protected in conflict-affected situations".<sup>166</sup> S/RES/1325 calls for, in particular, protection from sexual violence in conflict.<sup>167</sup> Of the eight subsequent WPS resolutions, four of them focus on this issue specifically: 1820, 1888, 1960 and 2106. For this reason, scholars describe it as the dominant pillar of WPS.<sup>168</sup>

This focus on women as victims of sexual violence in conflict is one that is limited, and one that feminist scholars are critical of for many reasons. First, there is an overrepresentation of women as victims of sexual violence which leads to a marginalisation of women's other roles in conflict: fighters, heads of households, perpetrators of acts of violence, etc. In line with this, focusing on sexual violence rather than as a facet of gendered violence more broadly also results in less attention to other forms of victimhood, for example for combatant women who are in need of disarmament, demobilisation and reintegration after the conflict, or as caretakers for members of the parties to the conflict. Furthermore, the focus on such acts occurring in *conflict* is an issue on its own. Indeed, women are also victims of gendered violence, be it sexual or not, in times of peace. In particular, violence in peacetime can include the absence of economic, social and cultural rights for women. While conflict exacerbates all forms of SGBV, insisting, the way international law has done and continues to do today,<sup>169</sup> on

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<sup>163</sup> S/RES/1325 (2000), §9, §10; S/RES/1820 (2008), 2, §3, §4; S/RES/1888 (2009), 3, §3; S/RES/1889, §2, §12; S/RES/1960 (2010), 2; S/RES/2106 (2013), 2; S/RES/2122 (2013), 2; S/RES/2467 (2019), 1.

<sup>164</sup> S/RES/1325 (2000), §6; S/RES/1820 (2008), §8; S/RES/1888 (2009), §6.

<sup>165</sup> S/RES/1820 (2008), §9, §10; S/RES/1888 (2009), §25, §26; S/RES/2106 (2013), §16(a).

<sup>166</sup> UN Strategic Results Framework on WPS, 1.

<sup>167</sup> S/RES/1325 (2000), §10.

<sup>168</sup> Marie O'Reilly, "Where the WPS Pillars Intersect" in *Oxford Handbook of WPS*, 194.

<sup>169</sup> Hilary Charlesworth, Christine Chinkin, *The Boundaries of International Law*, Manchester University Press, 2000, 49.

SGBV in conflict minimises other occurrences of SGBV and detracts from "normalised and systemic gender discrimination".<sup>170</sup>

Finally, the focus on *women* as victims of SGBV also detracts from SGBV against boys and men. While women make up the overwhelming majority of the victims of SGBV, which affects 1 in 3 women worldwide,<sup>171</sup> men and boys are also targeted. For two decades, however, they were mostly left out of the WPS framework despite its aim being to mainstream gender perspectives broadly speaking. S/RES/2106 first mentions men and boys in its preambulatory clauses as needing to be enlisted "in the effort to combat all forms of violence against women"; this is deemed "central to long-term efforts to prevent sexual violence in armed conflict and post-conflict situations". It then goes on to mention SGBV as "also affecting men and boys and those secondarily traumatised as forced witnesses of sexual violence against family members":<sup>172</sup> this was a first step in the right direction, though the way the wording lumps male victims of SGBV with secondarily traumatised victims almost suggests a hierarchy between them and primarily traumatised female victims. In 2015, S/RES/2242 reiterated the "important engagement by men and boys as partners in promoting women's participation in the prevention and resolution of armed conflict, peacebuilding and post-conflict situations", but left it at that.<sup>173</sup>

Only with S/RES/2467 did WPS properly bring men into the fold of its purview. First, it affirms that "men and boys who may have been victims of sexual violence in conflict including in detention settings" are, much like women, to "have access to national relief and reparations programmes, as well as health care, psychosocial care, safe shelter, livelihood support and legal aid".<sup>174</sup> But it then goes into even more detail, this time focusing on men and boys as a specific category of victims: "*recognises* also that men and boys are also targets of sexual violence in conflict and post conflict settings, including in the context of detention settings and those associated with armed groups; *urges* Member States to protect victims who are men and boys that offer appropriate responses to male survivors and challenge cultural assumptions about male invulnerability to such violence; *requests further* that the monitoring, analysis and reporting on arrangements on conflict-related sexual

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<sup>170</sup> Davies and True, "Reframing conflict-related sexual analysis and gender-based violence: Bringing gender analysis back in".

<sup>171</sup> UN Office for the Coordination of Humanitarian Affairs, "Gender-based violence: A closer look at the numbers", <https://www.unocha.org/story/gender-based-violence-closer-look-numbers>, 21 May 2019, accessed 31 August 2019.

<sup>172</sup> S/RES/2106 (2013), 1-2.

<sup>173</sup> S/RES/2242 (2015), 2.

<sup>174</sup> S/RES/2467 (2019), §28.

violence focus more consistently on the gender specific nature of sexual violence in conflict and post-conflict situations against all affected populations in all situations of concern, including men and boys".<sup>175</sup>

The evolution of language marks a colossal shift, from SGBV being something that only affects women and girls and therefore excludes men and boys from WPS, to it affecting men and boys (both directly and indirectly), to it affecting men and boys directly and therefore being an issue that needs to be addressed by Member States. This shift in language is representative of a broader shift in perspective: with S/RES/2467, WPS goes beyond being just about women and finally broadens its scope to actually focus on gender in general, at least when it comes to protection. That being said, WPS still lacks clarity when it comes to defining how protection is to be achieved.

### **3.2. Protection via the development of new roles within Women, Peace and Security**

WPS seems to consider creating offices focusing specifically on SGBV in conflict as one of the main ways to achieve protection. In particular, it created the roles of women's protection advisers, and of Special Representative to the Secretary-General on Sexual Violence in Conflict (SRSG-SVC). The UN choosing to create these offices, and particularly that of a SRSG on SVC specifically instead of WPS more broadly is interesting, as it further drives the point home of an overarching perception of women as victims of SVC addressed above, to which WPS is no exception.

S/RES/1888 (2009) set out the role of SRSG-SVC.<sup>176</sup> The first SRSG-SVC, Margot Wallström, was appointed in 2010; Zainab Hawa Bagura (2012-2017) and Pramila Patten (2017-present day) succeeded her. The SRSG-SVC is to "provide coherent and strategic leadership, to work effectively to strengthen existing United Nations coordination mechanisms, and to engage in advocacy efforts [...] with governments, [...] all parties to armed conflict and civil society, in order to address [...] sexual violence in armed conflict". She also chairs UN Action Against Sexual Violence in Conflict (UN Action), an inter-agency network of thirteen UN entities, among which DPKO, established in 2007 that pushed for the establishment of the SRSG-SVC in the first place.<sup>177</sup> The creation of the office of SRSG-SVC was intended to integrate and benefit from UN Action's pre-existing momentum and funding. This led to some issues when, for instance, the different SRSGs launched their own initiatives parallel

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<sup>175</sup> S/RES/2467, §32.

<sup>176</sup> S/RES/1888 (2009), §4.

<sup>177</sup> Eleanor O'Gorman, "WPS and the Special Representative of the Secretary-General for Sexual Violence in Conflict" in *Oxford Handbook of WPS*, 304.

to those already underway without reference to the latter. In the words of Eleanor O'Gorman, "At a minimum this created confusion, and diluted energies and resources. In some cases, it undermined the work and remit of UN Action by neither acknowledging what existed nor inviting UN Action for shared planning and advice."<sup>178</sup> Further complicating matters, UNGA established the UN Entity for Gender Equality and the Empowerment of Women (UN Women) in 2010 entirely outside the remit of WPS. Institutional overlap is thus not only a problem between WPS and other frameworks like CaAC as shown before, but also within WPS itself.

WPS's other suggestion to improve the protection of women and children from SGBV is to provide for the appointment of women's protection advisers (WPAs) in UN peacekeeping operations mandates,<sup>179</sup> along with that of gender advisers (Gas). The language of the resolutions makes unclear whether WPAs are a subset of GAs<sup>180</sup> or an entirely distinct category, with GAs in charge of "ensuring that gender perspectives are mainstreamed into policies, planning and implementation by all mission elements"<sup>181</sup> while WPAs focus exclusively on protection. The confusion on this point seems to imply that the drafters did not much care for continuity, further evidenced by the terms adviser/advisor being used interchangeably from resolution to resolution. The absence of coherence on paper makes it difficult to imagine WPS working any better in practice on this front.

Indeed, though commendable, the creation of these offices has had limited effect on the ground. The cases of South Sudan and DRC are examples of this. WPAs were first deployed with the UN Mission in South Sudan (UNMISS):<sup>182</sup> six WPAs were deployed in 2012/2013, followed in 2014 by a Senior WPA (SWPA), whose role was to advise the SRSG-SVC on the implementation of the WPS resolutions on CRSV.<sup>183</sup> According to interviews with UNMISS staff in Juba, the WPAs and SWPA were "poorly integrated in the operationalisation and practices of protection", in addition to being understaffed for the work expected of them due to the rest and recuperation patterns applicable in South Sudan.<sup>184</sup> According to the latest available information, UNMISS is

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<sup>178</sup> O'Gorman, 305.

<sup>179</sup> S/RES/1888 (2009), §12; S/RES/1889 (2009), §7; S/RES/1960 (2010), §10; S/RES/2106 (2013), §7; S/RES/2467 (2019), §22.

<sup>180</sup> S/RES/1888 (2009), §12: "identification of women's protection advisers among gender advisers and human rights protection units".

<sup>181</sup> S/RES/2106 (2013), §8.

<sup>182</sup> UNSC, *Security Council resolution 1996 (2011) [Reports of the Secretary-General on the Sudan]*, 08 July 2011, S/RES/1996 (2011), §24.

<sup>183</sup> S/RES/1960 (2010), §8.

<sup>184</sup> Hannah Elen Dönges, Janosch Kullenberg, "What Works (and Fails) in Protection" in *Oxford Handbook of WPS*, 168.

still two WPAs short; its mandate includes the budget for a total of nine WPAs.<sup>185</sup> One solution to this problem was "closer or more constant interaction with women on the [Protection of Civilian] sites and beyond them [...] through engaged personnel from the Relief, Reintegration and Protection Section after Civil Affairs Division",<sup>186</sup> which is yet another illustration of the necessity to better interconnect relevant UN frameworks as a way to better practice.

In DRC, the mandate of MONUSCO required the SRSG-SVC to "identify women's protection advisers among [the mission's] gender advisers and human rights protection units".<sup>187</sup> This understanding is consistent with S/RES/1888's approach to WPAs as a subset of gender advisers, which makes sense as the MONUSCO mandate was adopted three months after S/RES/1888. However, MONUSCO diverges from WPS in identifying WPAs among the Human Rights Protection Unit as well as GAs. This created a duality of roles: gender WPAs were to focus on SGBV and human rights WPAs on CRSV; the former handled "gender mainstreaming, awareness raising, and training", the latter "verification of incidents, monitoring and reporting".<sup>188</sup> When the first MONUSCO WPAs were finally deployed in 2014 (budgetary problems explain this five-year gap), both categories of WPA were considered independent parts of a triangle along with a Senior Protection Officer. Rather unsurprisingly, this structure "led to tensions on the division of roles and responsibilities among the different elements", and particularly confused partners outside the mission.<sup>189</sup> Today, all elements have been streamlined under the Joint Human Rights Office, which somewhat clarifies matters, though confusion remains. Illustrative of this, one finds different information on the number of WPAs deployed in Congo: the numbers range from one to five.<sup>190</sup> Lack of funding explains the understaffing. By contrast, there are 35 posts in MONUSCO's Child Protection unit.

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<sup>185</sup> Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "Implementing 1960", <https://www.un.org/sexualviolenceinconflict/our-work/implementing-1960/>, accessed 12 August 2019.

<sup>186</sup> *Idem*.

<sup>187</sup> UNSC, *Security Council resolution 1906 (2009) [on extension of the deployment of the UN Organisation Mission in the Democratic Republic of the Congo (MONUC)]*, 23 December 2009, S/RES/1906 (2009), §18.

<sup>188</sup> Dönges, Kullenberg, 168.

<sup>189</sup> Dönges, Kullenberg.

<sup>190</sup> Dönges, Kullenberg, 169.

Beyond MONUSCO and UNMISS, we know for certain that WPAs are deployed with MINUSCA,<sup>191</sup> UNAMID,<sup>192</sup> and MINUSMA.<sup>193</sup> In 2015, there were apparently 20 WPAs deployed in these operations,<sup>194</sup> with the addition of UNOCI.<sup>195</sup> It would appear that WPAs may also be made part of political UN missions,<sup>196</sup> not exclusively peacekeeping ones, as was the case of UNSMIL<sup>197</sup> or UNSOM,<sup>198</sup> which would slightly increase their overall number. Even then, the numbers available are low.

While it is difficult to extrapolate patterns from so little data, it is possible to emit hypotheses. In light of the above analysis, the number of WPAs appears irrelevant so long as their precise mandate is undefined. The UN must make clear where WPAs fit in its architecture: within WPS only? Beyond it, and if so under which other architectures? What is the relation between WPAs, GAs, the SRSG-SVC, other protection units? Are WPAs a standalone category or not? Establishing this would shape WPAs' mission and might enable those already deployed to effectively yield more results, without even needing to increase the numbers. That being said, it has barely been a decade since WPS created the role of WPA, and only seven years since they were first deployed: this can explain the lack of useable data.

With all of this in mind, the question is now whether this facet of the protection pillar could be used to address SEA by peacekeepers. The answer, in this author's perspective, directly ties in to the one given directly above: if not better defined strictly within WPS architecture, extending the mandate of WPAs and the SRSG-SVC would probably serve no purpose. Merely having more people deal with the issue but under different labels in no shape or form guarantees efficiency; if the previously mentioned example of CAR is anything to go by, it may indeed end up having the adverse effect of different actors delegating responsibility to address the problem *ad nauseam*, leading to no one actually dealing with the problem.

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<sup>191</sup> UN Multidimensional Integrated Stabilisation Mission in Central African Republic.

<sup>192</sup> African Union-United Nations Hybrid Operation in Darfur.

<sup>193</sup> UN Multidimensional Integrated Stabilisation Mission in Mali.

<sup>194</sup> UN, "Building Capacity of Women's Protection Advisers", <https://www.un.int/news/building-capacity-women%E2%80%99s-protection-advisers>, 01 April 2015, accessed 12 August 2019.

<sup>195</sup> UN Operation in Côte d'Ivoire.

<sup>196</sup> Women's International League for Peace and Freedom, "Meeting with Women's Protection Advisers focused on implementing the mandate to prevent sexual violence in conflict", <https://www.peacewomen.org/resource/meeting-women%E2%80%99s-protection-advisers-focused-implementing-mandate-prevent-sexual-violence>, accessed 12 August 2019.

<sup>197</sup> UN Support Mission in Libya.

<sup>198</sup> UN Assistance Mission in Somalia.

### 3.3. Protection *via* accountability

Another way to ensure protection is *via* accountability and the fight against impunity for SGBV. WPS has a number of mechanisms institutionalising accountability, chief among which the UN Team of Experts on Rule of Law and Sexual Violence in Conflict (ToE)<sup>199</sup> and Monitoring, Analysis and Reporting Arrangements (MARA).<sup>200</sup> The Team of Experts "works with the consent and cooperation of host governments, with the aim of fostering national ownership and responsibility for addressing [CRSV]" and provides technical support such as protection of victims/witnesses, support to criminal investigations and prosecutions, military justice, as well as reparations, in the countries it is deployed to.<sup>201</sup> MARA on the other hand exists to "ensure the systematic gathering of timely, accurate, reliable and objective information on [CRSV]" in order to achieve better advocacy and responses (for individual survivors as well as at country level).<sup>202</sup> They both technically fall under the purview of the SRSG-SVC, though (S)WPAs may also be in charge of expediting the establishment of MARA locally, as was the case of the SWPA appointed in South Sudan in 2014.<sup>203</sup>

Any data gathered by MARA can then contribute to the UNSG's naming and shaming policy, which is another element of accountability. Explicitly drawing on a UNSC resolution from the CaAC architecture<sup>204</sup> in S/RES/1888 (2009)<sup>205</sup> – once again illustrating the interconnectedness of various UN frameworks – WPS encourages the UNSG to include "detailed information on parties to armed conflict that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence" in annual reports, and to include an annex listing the parties responsible for patterns of such behaviours.<sup>206</sup> Originally, the list served mostly as an indicator of progress,<sup>207</sup> but this changed in 2015 to address SEA by peacekeepers. Now, a country repeatedly listed in the annex may find itself "prohibited from participating in United Nations peacekeeping operations" until it ceases such violations and falls in line with applicable UN regulations.<sup>208</sup> If it does not, the sanction, as already explained in sections 1.1 and 1.4, is suspension.

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<sup>199</sup> S/RES/1888 (2009), §8.

<sup>200</sup> S/RES/1960 (2010), §8.

<sup>201</sup> Office of the SRSG-SVC, "UN Team of Experts on Rule of Law and Sexual Violence in Conflict", <https://www.un.org/sexualviolenceinconflict/our-work/team-of-experts/>, accessed 20 August 2019.

<sup>202</sup> Office of the SRSG-SVC, "Monitoring, Analysis and Reporting Arrangements (MARA)", <https://www.un.org/sexualviolenceinconflict/tools-for-action/mara/>, accessed 20 August 2019.

<sup>203</sup> *Oxford Handbook of WPS*, 167.

<sup>204</sup> UNSC, *Security Council resolution 1882 (2009) [on children and armed conflict]*, 04 August 2009, S/RES/1882 (2009).

<sup>205</sup> S/RES/1888 (2009), 2.

<sup>206</sup> S/RES/1960 (2010), §3, §18(c).

<sup>207</sup> S/RES/1960 (2010), §4.

<sup>208</sup> S/RES/2242 (2015), §10; S/RES/2467 (2019), §15.

Another aspect of accountability consists in placing the brunt of responsibility for SEA by peacekeepers squarely on TCCs. WPS integrated this into its resolutions following the events in CAR in 2015, urging for the first time "police- and troop- contributing countries to [...] conduct swift and thorough investigations of their uniformed personnel and, if appropriate, to prosecute".<sup>209</sup> TCCs are then to keep the UN informed of any developments. WPS further urges these countries to "provide *robust* pre-deployment training on sexual exploitation and abuse and vetting of their peacekeeping personnel" (emphasis added) as a way to address the issue. The choice of adjective is uncommon, as is the level of detail WPS provides, which shows how important it considers the matter. Prior to 2015, WPS only invited Member States to provide gender-sensitive training to soldiers on "the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures [...] as well as HIV/AIDS awareness training."<sup>210</sup> this was less with the idea of peacekeeping in mind than that of ensuring local troops were equipped to address women's needs. This makes S/RES/2242's provisions on peacekeeping all the more exceptional.

The SEA framework provides a similar requirement of investigation, though it makes it the UN's responsibility. The documents that deal with this are the UNSG's 2003 Bulletin, the Zeid Report of 2005, and a 2008 Comprehensive Strategy on Assistance and Support to Victims.<sup>211</sup> The Bulletin puts the Head of Department, Office or Mission in charge of addressing allegations of SEA; they are to pass any information of an investigation to the Department of Management.<sup>212</sup> If the investigation yields proof, the cases may, "upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution".<sup>213</sup> From the language of the Bulletin, there appears to be no obligation to investigate or to prosecute: this is only a possibility. Another problem with UN mission leaders bearing the brunt of responsibility for discipline of individual conduct is that it further corroborates the individualised understanding of SEA of 1.4, in that discipline of individual behaviours relies on the will of other individuals, and not on an institutional policy. This feeds into the difficulties of effectively responding to SEA.

The Zeid Report of 2005 goes into more detail, making the investigative process of SEA the second of its four main areas of concern. The section on this matter, however, opens with the acknowledgement of TCCs'

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<sup>209</sup> S/RES/2242 (2015), §9.

<sup>210</sup> S/RES/1325 (2000), §6.

<sup>211</sup> UNGA, *United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel*, 07 March 2008, A/RES/62/214.

<sup>212</sup> 2003 Bulletin, §4.6.

<sup>213</sup> *Ibid*, §5.

complaint that DPKO's investigative mechanisms do not "emphasise that there must be a presumption that the troops investigated have acted properly",<sup>214</sup> which rather sets the tone for Prince Zeid's approach in general. While he "referred to the need for basic first-aid medical treatment, follow-up support, including social assistance and indicated that such support should be coordinated with relief agencies that are able to provide such assistance [...], called for a voluntary trust fund to be established to help with financing assistance [and underlined the] need to provide basic advice to alleged victims",<sup>215</sup> the way in which he framed the response to SEA remains narrow. His preference for the expression 'alleged victims'<sup>216</sup> over 'victims' creates an unnecessary distinction which illustrates this.<sup>217</sup>

The 2008 Strategy then essentially reiterates the Zeid Report's mindset and discourse: it differentiates between complainants<sup>218</sup> and victims,<sup>219</sup> and grants them different rights. They are both to benefit from "medical care, legal services, support to deal with the psychological and social effects of the experience and immediate material care, [...] as necessary" though according to the Strategy complainants should only receive basic assistance and support, whereas victims ought to receive additional assistance and support.<sup>220</sup> In 2015, the UNSG still reflected this mindset in official statements, stating for example that "A single substantiated case of sexual exploitation or sexual abuse involving United Nations personnel is one case too many".<sup>221</sup> The word 'substantiated' was not strictly necessary, as precedent has shown that there is no question whether or not peacekeepers are responsible for such gross abuses of power, yet it was included anyway: this reflects a viewpoint where the first instinct is still to doubt victims' claims.

The specifics of who is in charge of providing such support are unclear. Per the 2008 Strategy, "Assistance and support should be provided through existing services, programmes, and their networks [in the host State]. However, where necessary, the United Nations should consider the development of new services [...]".<sup>222</sup>

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<sup>214</sup> Ibid, §28.

<sup>215</sup> REDRESS, *ibid* n (11), 8

<sup>216</sup> Zeid Report, 5.

<sup>217</sup> REDRESS, *ibid* n (11), 9.

<sup>218</sup> 2008 Strategy, §5(c): Persons who allege, in accordance with established procedures, that they have been, or are alleged to have been, sexually exploited or abused by United Nations staff or related personnel, but whose claim has not yet been established through a United Nations administrative process or Member States' processes, as appropriate.

<sup>219</sup> Ibid, §5(d): Persons whose claims that they have been sexually exploited or abused through a United Nations administrative process or Member States' processes, as appropriate.

<sup>220</sup> 2008 Strategy, §6, §7.

<sup>221</sup> UNGA, *Special measures for protection from sexual exploitation and sexual abuse: Report of the Secretary-General*, 13 February 2015, A/69/779, §1.

<sup>222</sup> Ibid, §10.

Despite the latter section, this does not truly provide for the scenario in which "there are no agencies willing or able to provide support in the areas where victims (or complainants) are located, or if support services are inadequate or too short-lived to address the needs",<sup>223</sup> especially with the Zeid Report making funding reliant on voluntary contributions only. The lack of obligation to supply financing combined with the provisions' general absence of clear requirements questions the ability of the current system to effectively address SEA by peacekeepers. Using WPS might be particularly helpful in this regard, as it encourages the strengthening, including through financial support, of women's civil society and networks, as well as of national institutions' ability to address gendered issues: WPS could thus be used to better ensure that the appropriate structures mentioned in the SEA framework exist.

Much like WPS, the UN's SEA framework considers suspension a solution: however, it only considers the suspension of individuals without pay and not that of TCCs from peace operations entirely. This was the case of General Babacar Gaye following the allegations in CAR, who was suspended not for committing SEA himself but for not holding responsible those under his command.<sup>224</sup> While the UN finally acting on this possibility is commendable, the fact that it took a decade for it to make use of the provision is a matter for concern. In light of this delay, it is this author's opinion that the suspension of TCCs per WPS is unlikely to happen anytime soon, if at all, as the UN appears reluctant to act on the matter and cannot, furthermore, afford to lose troops.

The above analysis shows that despite the UN's claims to operate on the basis of a victim-centred approach, the reality is one that is perpetrator-focused. Within the SEA framework in particular, accountability is couched in terms of individual behaviour, be it that of the perpetrator or the person in charge of investigating allegations of SEA. WPS's focus on TCCs behaviour would allow for a much more systemic approach, hence providing yet another reason as to why SEA ought to be viewed through its lens.

It would also be a way of encouraging the prosecution of individuals whom investigations find to have committed SEA. At present, such prosecution is the sole remit of TCCs, and when it occurs it often lacks transparency.<sup>225</sup> The UN cannot force or enforce prosecution (similar to the issue of deployment of female peacekeepers illustrated above). In practice, this means that there are no guarantees of peacekeepers facing sanctions,

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<sup>223</sup> REDRESS, *ibid* n (11), 9.

<sup>224</sup> Secretary-General's remarks to Security Council consultations on the situation in the Central African Republic, 13 August 2015, <https://www.un.org/sg/en/content/sg/statement/2015-08-13/secretary-generals-remarks-security-council-consultations-situation>, accessed 26 August 2019.

<sup>225</sup> Deschamps, 25.

especially once they leave the mission to return home. But the UN is not much better at addressing the issue itself: "it rarely turns its personnel over for criminal investigation and prosecution; accused rapists are dealt with internally, where they face little more than administrative review by the UN bureaucracy".<sup>226</sup> The CAR scandal very much brought this to light, though it is not the sole incident of the UN's mishandling of SEA cases.<sup>227</sup> The UN also never followed up on the Zeid Report's recommendation that it create a permanent professional investigative mechanism.<sup>228</sup> The UNSG claims that SEA statistics appear to be decreasing, with "54 allegations reported in 2018 compared with 62 and 104 reported in 2017 and 2016, respectively",<sup>229</sup> but in light of all the above it is permitted to be sceptical.

First and foremost, the "statistics are unlikely to paint an accurate picture of the scale and scope of [SEA] given the limited manner in which the UN tracks incidents of sexual violence by peacekeepers [...], and the likelihood that such incidents are vastly under-reported".<sup>230</sup> Scholars further suggest that the decline in SEA statistics may be a result of it moving underground.<sup>231</sup> Some scholars thus favour the opposite perspective to the UNSG's claims and suggest that "the culture of impunity has only become more entrenched as both victims and perpetrators have little reason to believe that crimes will be punished in any meaningful way or that effective measures will be put in place to prevent future abuses".<sup>232</sup>

From the victims' perspective, this is made worse by the fact that they are generally not made aware if/when perpetrators do end up facing justice, nor do they receive direct assistance from the UN.<sup>233</sup> In March 2016, the UNSG established the Victims Trust Fund (VTF) recommended by the Zeid Report with the goal of funding specialised services that provide assistance and support to victims (medical care, legal services, psycho-social support); "so far, some US\$ 2 million are available [...] from voluntary contributions from 19 countries as well as

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<sup>226</sup> Code Blue Campaign, "Code Blue Responds to New Allegations of Sexual Abuse in MONUSCO", <http://www.codebluecampaign.com/press-releases/2017/11/17?rq=prosecution>, 17 November 2017, accessed 27 August 2019.

<sup>227</sup> Code Blue Campaign, "Code Blue: A Proposal for Independent Accountability for Sexual Exploitation and Abuse Committed by United Nations Personnel", <http://www.codebluecampaign.com/analysis/2018/4/20?rq=prosecution>, 18 April 2018, accessed 27 August 2019.

<sup>228</sup> Zeid Report, §32.

<sup>229</sup> UNGA, *Special measures for protection from sexual exploitation and abuse. Report of the Secretary-General*, 14 February 2019, A/73/744, §70.

<sup>230</sup> Deschamps, 16.

<sup>231</sup> *Oxford Handbook of WPS*, 227.

<sup>232</sup> Deschamps, 16.

<sup>233</sup> Code Blue Campaign, Paula Donovan "Is António Guterres' 'new approach' to UN sex abuse just a repackaged version of the old, failed approach?", <http://www.codebluecampaign.com/analysis/2018/10/16/old-approach>, 16 October 2018, accessed 01 September 2019.

from payments withheld from civilian, military and police personnel against whom sexual exploitation and abuse allegations have been substantiated, which amount to approximately US\$ 317,000".<sup>234</sup> Although UNSG Guterres has described this as "an effective remedy" providing "the resources victims need", the VTF "disperses the funds as grants to civil society organisations that provide generalised services in a fraction of the affected communities in a small number of countries":<sup>235</sup> individual victims remain entirely outside the remit of the UN, which is "at odds with the [its] institutional obligation to ensure that adequate support and assistance is provided".<sup>236</sup>

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<sup>234</sup> UN, Preventing Sexual Exploitation and Abuse, "Trust Fund in Support of Victims of Sexual Exploitation and Abuse", <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/trust-fund>, May 2019, accessed 01 September 2019.

<sup>235</sup> Code Blue Campaign, Paula Donovan, *ibid* n (233).

<sup>236</sup> REDRESS, *ibid* n (11), 36.

## CHAPTER FOUR: Potential gaps in addressing sexual exploitation and abuse through the lens of Women, Peace and Security: the issue of peacekeeper babies

WPS consistently refers to children throughout its resolutions. These references frame children as direct victims of violence, particularly conflict. However, in the context of peacekeeping, children may also be victims in another manner: this is the question of children born of SEA. This chapter will address how the UN's SEA framework deals with the question in theory (4.1), how theory measures up in practice (4.2), and how WPS addresses the matter, if at all (4.3).

### 4.1. Peacekeeper babies in the UN's sexual exploitation and abuse framework

Also known as "peacekeeper babies", they were first brought to international attention with the cases of Liberia, and the UN Mission of Support in East Timor (UNMISSET) in the early 2000s.<sup>237</sup> The UN addressed the question as of the Zeid report, thus including it as a subset of SEA almost from the get-go of its zero-tolerance policy. Indeed, according to the report, peacekeeper babies are "a consequence of sexual exploitation and abuse, [...] fathered and abandoned by peacekeeping personnel".<sup>238</sup> The question of the legal avenues available to peacekeeper babies and their mothers ties in directly with the way the UN defines SEA: per the 2003 Bulletin, "Sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations",<sup>239</sup> even when these relationships occur between consenting adults, especially when there is no transactional element. Expressing a definitive opinion on this particular point does not come easy personally: on the one hand, can consent really be given freely when power dynamics are strongly imbalanced, or does that imbalance automatically create an exploitative situation where the opportunity to refuse is actually absent? On the other hand, however, including these kinds of relationships as well as ones that involve a transactional element under the umbrella of SEA completely negates what agency some women may have in the matter, which is inconsistent with a feminist approach.<sup>240</sup> With peacekeeping missions generally deployed to non-white countries and, as a result, the fact that women victims of SEA are generally women of colour, there are also racist undertones to this approach, which is doubly problematic if one's feminism aims to be intersectional.

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<sup>237</sup> Olivera Simić, Melanie O'Brien, "'Peacekeeper Babies': An Unintended Legacy of United Nations Peace Support Operations" in *Journal of International Peacekeeping*, vol. 21, no. 3, 2014, 345-363.

<sup>238</sup> Zeid report, §6.

<sup>239</sup> 2003 Bulletin, §3.2(d).

<sup>240</sup> *Oxford Handbook of WPS*, 230, 231.

The UN's perspective, however, does not bother with such hesitations: all relationships between peacekeepers and local women amount to SEA, therefore all babies born of such relationships are peacekeeper babies and ought to benefit from the provisions the UN sets out to this effect.

The Zeid report addresses peacekeeper babies in §72 to 77, which make up the section on financial accountability more generally. Peacekeepers are to "bear some financial responsibility for their actions";<sup>241</sup> this is because "victims and abandoned peacekeeper babies may face stigmatisation by their families and communities, which deprive them all support (economic, social, emotional, etc.)", which may further push them into an exploitative cycle.<sup>242</sup> The report only addresses the cases of "victims who have credible evidence of paternity", which are subdivided between those living in a State with a functioning legal system, and those who do not. In the former scenario, victims are encouraged to "seek a court order for support". In the latter scenario, the UNSG a two-fold role in ensuring that an avenue remains open to victims to obtain support. First, per the report, the UNSG ought to help establish the peacekeepers' paternity *via* a DNA test,<sup>243</sup> then, if paternity is confirmed, it recommends that the UN deduct a specified amount of the peacekeeper's salary. In cases where the identity of the father is unknown, "some assistance could be given from the trust fund for victims".<sup>244</sup> The UN may also act as an intermediary between victims and TCCs, by assisting the former in making a claim "that could be forwarded to [the latter] for consideration".<sup>245</sup>

As already established in section 3.3., the UN implemented the Zeid report's recommendations regarding victims to some extent in the pre-cited 2008 Comprehensive Strategy, as well as the 2009 SEA Victim Assistance Guide.<sup>246</sup> These documents do not address peacekeeper babies specifically. However, they "establish the UN's commitment to facilitate paternity and child support claims" when combined with the UNSG's 2019 report on SEA<sup>247</sup> and the UN's measures on such claims.<sup>248</sup>

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<sup>241</sup> Zeid report, §72.

<sup>242</sup> *Ibid*, §10.

<sup>243</sup> *Ibid*, §72, 76.

<sup>244</sup> §76.

<sup>245</sup> Zeid report, §77.

<sup>246</sup> Sienna Merope-Synge, "Emerging Voices: Seeking Child Support from UN Peacekeepers – A View from Haiti" in *Opinio Juris*, <https://opiniojuris.org/2019/08/16/emerging-voices-seeking-child-support-from-un-peacekeepers-a-view-from-haiti/>, 16 August 2019, accessed 14 September 2019.

<sup>247</sup> *Idem* n (229).

<sup>248</sup> *Idem Opinio Juris*.

In 2014, DPKO and the Department of Field Support developed a "DNA sample collection protocol" and started providing field missions with "DNA paternity collection kits and guidance for their use".<sup>249</sup> However, the UN makes very clear that it "*can* refer complainants or victims to legal assistance and *can* link complainants or victims with the appropriate officials in the country where they wish to bring their claim [...], *can* facilitate the collection and transmission of samples for testing" (emphasis added),<sup>250</sup> not that it *must*. The collection and transmission of samples for testing to TCCs only possible "where the national legislation of a Member State permits the use of DNA samples for testing for paternity", which adds another hurdle to the proceedings available to victims even though Member States have a "duty to facilitate matters relating to paternity claims involving military or police personnel".<sup>251</sup> The UN appears fully aware of its own limitations on this matter: even in cases of established paternity, though the UN "*can* facilitate the exchange of legal documents to ensure that paternity is legally recognised by courts in the countries of both the mother and father and that arrangements are made for the payment of child support" (emphasis added), it acknowledges that the "cooperation and active engagement of Member States throughout the process is essential".<sup>252</sup>

#### 4.2. Addressing the issue of peacekeeper babies in practice

Despite the established theoretical framework, the UN's help with peacekeeper babies is limited. Liberia, for instance, registered around 6000 peacekeeper babies in 2000.<sup>253</sup> Liberia is the situation with the best available numerical data on the number of registered peacekeeper babies. In Timor, media sources contemporary to the scandal put the number of peacekeeper babies at "at least 20".<sup>254</sup> At present, it appears that "more than two dozen Haitian women" are pursuing paternity claims against peacekeepers,<sup>255</sup> among which ten or eleven before Haitian courts.<sup>256</sup> In 2017, this number put Haiti in second place for most paternity claims per country

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<sup>249</sup> Conduct in UN Field Missions, "Paternity Claims", <https://conduct.unmissions.org/remedial-paternity>, 2019, accessed 14 September 2019.

<sup>250</sup> Idem.

<sup>251</sup> Idem.

<sup>252</sup> Idem.

<sup>253</sup> Elisabeth Rehn, Ellen Johnson Sirleaf, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, 2002, 16.

<sup>254</sup> Lindsay Murdoch and Dili, "UN's legacy of shame in Timor" in *The Age*, <https://www.theage.com.au/world/uns-legacy-of-shame-in-timor-20060722-ge2rns.html?page=fullpage>, 22 July 2006, accessed 15 September 2019.

<sup>255</sup> Makini Brice, "Haitian women press for recognition from UN peacekeeper fathers" in *Reuters*, <https://www.reuters.com/article/us-haiti-un-feature-idUSKBN18S4LO>, 01 June 2017, accessed 14 September 2019.

<sup>256</sup> Idem Brice; Ricardo Lambert, "Un peu d'espoir pour les femmes et les enfants abandonnés par les Casques bleus" in *Le Nouvelliste*, <https://lenouvelliste.com/article/186602/un-peu-despoir-pour-les-femmes-et-les-enfants-abandonnes-par-les-casques-bleus>, 25 April 2018, accessed 14 September 2019.

behind the DRC.<sup>257</sup> In CAR, nine girls were left pregnant with peacekeeper babies.<sup>258</sup> Lastly, there would appear to be peacekeeper babies in Mali<sup>259</sup> and South Sudan, though there is no data available. The UNSG's 2019 SEA report mentions the field victim's rights advocate partnering "with a national non-governmental organisation to provide legal assistance to victims, in particular with respect to paternity and child support claims", which is the sole reason one can reasonably assume that peacekeeper babies are an issue in South Sudan at all.<sup>260</sup>

The lack of official sources makes analysis very difficult. The UN has made no data prior to 2010 available,<sup>261</sup> meaning the sources on the matter are essentially media sources. Though valuable, these sources may provide less information than official ones. According to the figures put forth by the UN, there have been 233 paternity claims from 2010 to this day, and 9 potential paternity claims. This number was at 111 in June 2017; of these, "only 17 claims worldwide [had] been confirmed", which amounts to 15%. Despite thorough research, finding more recent data has proved impossible, which is especially frustrating given that the number of claims has more than doubled since then and that it would be useful to look at how the trends have evolved, if at all – especially in light of how bleak said trends were in 2017 – in order to assess the efficacy of the UN's measures.

Haiti is probably one of the examples to best serve to illustrate this: it has a decent amount of available data, particularly from local NGOs "pursuing child support claims on behalf of victims of SEA":<sup>262</sup> these are the *Bureau des avocats internationaux* (BAI), partnered with the Institute for Justice & Democracy in Haiti (IJDH). Haiti also benefits from prior media scrutiny, especially in relation to peacekeepers, who are responsible for bringing a cholera epidemic to the island in 2010, leading to the death of ten thousand people and eight hundred thousand getting infected (about 8% of Haiti's total population).<sup>263</sup>

BAI, in August 2016, sent the UN legal notifications "informing the [SRSG to MINUJUSTH,<sup>264</sup> the successor to MINUSTAH] of its intention to file child support suits", which the UN ignored. BAI reiterated the request in

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<sup>257</sup> Idem Brice, Reuters, n (255).

<sup>258</sup> Inna Lazareva, "Broken promises for the children of Bangui abused by peacekeepers" in *The Guardian*, <https://www.theguardian.com/global-development/2017/mar/28/broken-promises-children-bangui-reports-peacekeepers-abuse-central-african-republic>, 28 March 2017, accessed 14 September 2019.

<sup>259</sup> Idem Brice, Reuters, n (255).

<sup>260</sup> UNSG 2019 SEA Report, n (229), §32.

<sup>261</sup> Idem Brice, Reuters, n (255).

<sup>262</sup> Idem *Opinio Juris*, n (246).

<sup>263</sup> UN Office of the High Commissioner on Human Rights, "Statement by Professor Philip Alston, Special Rapporteur on extreme poverty and human rights UN responsibility for the introduction of cholera into Haiti", <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20794&LangID=E>, 25 October 2016, accessed 16 September 2019.

<sup>264</sup> UN Mission for Justice Support in Haiti.

January 2017 and "worked with media to ensure the UN was aware of the cases through press coverage and inquires" as well as through formal legal channels. By December 2017, with the UN still unresponsive, "BAI filed the claims in Haitian courts with the UN cooperation requested". This is despite the UN having affirmed its commitment to help with paternity claims against peacekeepers. In April 2018, the Victims' Rights Advocate travelled to Haiti to meet with some of the claimants, a visit the UNSG speaks of in the 2019 report, saying that they "worked to ensure more timely communication on outstanding paternity claims, resulting in several victims formally receiving long-pending DNA test results".<sup>265</sup> BAI and IJDH, however, note that "several of the cases remain pending" even to this day, despite the VRA's personal involvement, and that where the UN did provide some information, it did so by contacting the victims directly, thus completely bypassing their chosen legal representation. Overwhelmingly, the UN has ignored their requests for cooperation, "gravely undermining [the victims'] ability to pursue their claims".<sup>266</sup> It would seem that the UN has also ignored a direct order from a Haitian court which "ordered the [SRSG for MINUJUSTH] to provide the court with all necessary and otherwise useful information pertaining to the case of [BAI and IJDH's] client, particularly that which relates to the identity of the defendant".<sup>267</sup> All of these elements – in particular regarding the court order, should this be further corroborated – show that the UN's practice is not at all in line with its discourse when it comes to paternity claims. The lack of data on the other countries where peacekeeper babies are an issue reinforces this.

#### 4.3. Peacekeeper babies and Women, Peace and Security

Prior to resolution 2467, WPS does not explicitly refer to peacekeeper babies. However, a number of its provisions could technically be interpreted to extend to peacekeeper babies. First and foremost, all the WPS provisions relevant to accountability and fighting impunity for SEA in general, as exposed in section 3.3, can be extended to take the question of peacekeeper babies into account as they are considered to be part of the remit of the UN's SEA policy, which WPS does clearly refer to. MARA and the ToE could reasonably easily be asked to collect data on and provide assistance to, respectively, peacekeeper babies and their mothers. The naming and shaming policy could be used to single out contingents who leave children behind, especially considering that the CaAC agenda as well as WPS provides for naming and shaming.<sup>268</sup> WPS' requirement that police- and

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<sup>265</sup> UNSG 2019 SEA Report, n (229), §32.

<sup>266</sup> *Idem Opinio Juris*, n (246).

<sup>267</sup> Letter from BAI and IDJH to UN Victims' Rights Advocate Jane Connors, <http://www.ijdh.org/wp-content/uploads/2019/01/EN-BAI-IJDH-Demand-UN-Accountability-for-SEA-Victims-in-Open-Letter-REDACTED.pdf>, 14 January 2019, accessed 16 September 2019.

<sup>268</sup> S/RES/2242 (2015), §10.

troop-contributing States provide prompt investigations and (where relevant) prosecution for SEA applies to peacekeeper babies as well even if they are not mentioned, again because the UN considers them to fall under the SEA's framework of reference: *ipso facto*, they also fall under WPS on this particular point.

WPS resolutions also implicitly left room for peacekeeper babies in their mandate before 2019 through references to the Convention on the Rights of the Child (CRC).<sup>269</sup> In its first mention, the CRC appears to be yet another legislative tool guaranteeing the protection of "girls, especially as civilians" in armed conflicts, which makes it of less interest.<sup>270</sup> However, it is next mentioned much more broadly in the resolutions' preambles, with WPS reaffirming or recalling "the obligations of States Parties to [...] the Convention on the Rights of the Child and the Optional Protocols thereto, and *urging* States that have not done so yet to consider ratifying or acceding to them".<sup>271</sup> As it happens, the CRC grants any child "as far as possible, the right to know and be cared for by his or her parents";<sup>272</sup> States are expected to help secure this right. Furthermore, it deems the parent(s) to have "the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development".<sup>273</sup> States must help parents implement this right, which can include "material assistance and support programmes, particularly in regard to nutrition, clothing and housing".<sup>274</sup> States are also "to take all appropriate measures to secure the recovery of maintenance for the child the parents [...], both within the State Party and from abroad".<sup>275</sup>

How does this affect peacekeeper babies? First, the child's right to know their parents and the State's obligation to help achieve this entrenches the access to paternity tests in situations of SEA in the human rights framework. The fact that parents, per the CRC, need to secure the children's living conditions then allows for the matter of child support for peacekeeper babies to be similarly backed by human rights. It is interesting to note that the CRC is a UN treaty; one might expect the UN to better fall in line with its own human rights treaty. Furthermore, almost all States save for the United States, Somalia and South Sudan have ratified the CRC.<sup>276</sup> Neither Somalia nor South Sudan provides any peacekeepers; the US has provided a total of 34 peacekeepers over the course

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<sup>269</sup> UNGA, *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3.

<sup>270</sup> S/RES/1325 (2000), §9. S/RES/1888 (2009); S/RES/1889 (2009), 1.

<sup>271</sup> S/RES/1820 (2008), 1; S/RES/1888 (2009), 1; S/RES/1889 (2009), 1.

<sup>272</sup> CRC, art. 7(1).

<sup>273</sup> CRC, art. 27(2).

<sup>274</sup> CRC, art. 27(3).

<sup>275</sup> CRC, art. 27(4).

<sup>276</sup> Humanium, Signatory States and Parties to the Convention on the Rights of the Child. The Convention on the Rights of the Child, <https://www.humanium.org/en/convention/signatory-states/>, accessed 19 September 2019.

of the history of peacekeeping missions.<sup>277</sup> *In concreto*, this means that most, if not very nearly all, peacekeepers responsible for fathering peacekeeper babies are nationals of a State bound by the CRC, making it all the more startling that obtaining redress is so complicated. However, the fact that the children were fathered abroad, with their fathers deployed under the UN's banner, admittedly throws a spanner in the works and raises questions as to the extra-territorial application of the CRC.

As for more direct references to peacekeeper babies in WPS, there are three of them to be found in resolution 2467. This is the first explicit acknowledgement in WPS, in almost two decades, of children born as a result of CRSV; before this, the perception of children in WPS was limited to direct victims of sexual violence only. Resolution 2467 mentions "women and girls who become pregnant as a result of sexual violence in armed conflict [...] and their children born as a result of sexual violence, [...] women, girls and children born of sexual violence in armed conflict" (emphasis added),<sup>278</sup> and "women with children born as a result of sexual violence in conflict".<sup>279</sup> Such description extends beyond the sole matter of peacekeeper babies; however, the following analysis will not look at other understandings of the question.

With S/RES/2467, WPS recognises the "different specific needs [of women, girls and their children born of CRSV], and [...] the connected, distinct, sometimes life threatening and enduring risks and harms often face by those women, girls and their children born as a result of sexual violence, including economic and social marginalisation, physical and psychological injury, statelessness, discrimination and lack of access to reparations".<sup>280</sup> WPS's assessment of the risks and harms victims may find themselves facing mirrors the SEA framework, which offers a similar reasoning as to why it should address the matter of peacekeeper babies. It urges "States to recognise the equal rights of all individuals affected by sexual violence in armed conflict, in national legislation, consistent with their obligations under [...] the Convention on the Rights of the Child, as applicable, *further requests* the Secretary-General to report to the Security Council on these issues [...] and *requests* the Special Representative of the Secretary-General on Children and Armed Conflict to cooperate with the Special Representative on Sexual Violence in Conflict and other relevant UN entities on that matter".<sup>281</sup>

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<sup>277</sup> UN Peacekeeping, *Contributions to UN Peacekeeping Operations by Country and Post. Police, UN Military Experts on Mission, Staff Offices and Troops*, 31 July 2019, <https://peacekeeping.un.org/en/troop-and-police-contributors>, accessed 20 September 2019.

<sup>278</sup> S/RES/2467 (2019), §18.

<sup>279</sup> S/RES/2467 (2019), §28.

<sup>280</sup> S/RES/2467 (2019), §18.

<sup>281</sup> *Idem*.

Several things are further worth noting here: first, the inclusion of States' obligations under the CRC in an operative clause for the first time clearly makes it one of the applicable frameworks to babies born of CRSV, including SEA, as opposed to previous resolutions only implying it; the previous section has shown why and how this can strengthen victims' rights. Second, the request that the SRSG-SV and SRSG on CaAC cooperate further drives home the connection between the UN's various agendas when it comes to issues that affect women and children, as established in chapter one of this analysis, and underlines the importance of addressing these issues not as standalones but taking broader, underlying issues such as gender into account.

Resolution 2467 also affirms that "victims of sexual violence, committed by certain parties to armed conflict, including non-State armed groups designated as terrorist groups, should have access to national relief and reparations programmes, as well as health care, psychosocial care, safe shelter, livelihood support and legal aid and that services should include provisions for women with children born as a result of sexual violence in conflict".<sup>282</sup> Again, this echoes the SEA framework on the issue of peacekeeper babies in requiring that victims have access to relief and reparation programmes. The inclusion of a detailed list of the other services victims should benefit from is commendable, especially when contrasted with the SEA framework's rather vague requirement of assistance. However, a key problem with WPS's solution lies in the requirement that such programmes be national ones. Indeed, the crux of the issue of peacekeeper babies is precisely that those from whom victims of SEA seek assistance are *not* nationals of their own State, which is why obtaining acknowledgement of paternity and financial support is so complicated. Therefore, while this author applauds the progress made in resolution 2467 when it comes to children born of CRSV, it is regrettable that it cannot be used as it stands to strengthen the SEA framework on peacekeeper babies in the same way that such a thing was possible on other topics.

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<sup>282</sup> S/RES/2467 (2019), §28.

## CONCLUSION

This dissertation aimed to compare WPS and the UN's SEA response framework to determine whether or not the former could serve as a background in the use of the latter, in order to guarantee a more comprehensive, holistic response to SEA. Although other frameworks, such as the Protection of Civilians or Children and Armed Conflict agendas, factored into this analysis, WPS was the main focus, especially its protection and participation pillars. The lack of useable data proved to be a recurring problem throughout, no matter which issue or pillar was the focus of the chapter.

Protection under WPS overlaps significantly with the zero tolerance policy, in particular in its requirement that impunity for perpetrators of sexual and gender-based violence be challenged. It also goes beyond this, creating offices specifically designed to monitor and report such behaviours, something that would not go amiss in the SEA framework which at present puts only the Secretary-General in charge of this. Despite some underlying issues with the protection pillar, chief among which the gendered protection norm it perpetrates, it nonetheless provides for a broader understanding than what the zero tolerance policy proposes, one that analyses sexual violence as a gender issue and not just as the result of individual behaviour.

The results are more mixed as regards participation. Indeed, participation is the lesser pillar even within WPS; as regards SEA, participation would essentially be relevant as a gateway to guarantee protection, which, as this analysis has shown, is an approach that has its problems. Bringing the participation pillar into the fold of the response to SEA would likely only yield results in the long run, which, while a commendable endeavour to strive towards regardless, limits its purpose as a solution to the inefficiency of the zero tolerance policy now.

Lastly, the issue of peacekeeper babies, which is a substantial subset of SEA, is mostly left out of the remit of WPS. Through interpretation, a select number of WPS provisions allow for the inclusion of peacekeeper babies under its mandate, but overall it does not stand out as the architecture best suited to address this specific matter from a more human rights-oriented perspective – though WPS rules on victims' rights could of course apply generally to this scenario. The Children and Armed Conflict Agenda may be better suited to the task, though detailed analysis would be needed in order to corroborate or reject this hypothesis.

In conclusion, WPS is a flawed architecture, both in its own right and as a lens through which to view SEA by peacekeepers. However, it has the distinct advantage over the zero tolerance policy of looking at and seeking to address gender imbalances which are behind issues like SEA, which makes it a valuable tool irrespective of its limitations. The fact that it seeks to be proactive is another advantage; in stark contrast, the SEA framework developed *post facto* in the wake of various scandals that shook confidence in the UN and forced it to act to clean up its image, which is far from the best way to ensure the adoption of healthy policies. Finally, as illustrated throughout this paper, WPS has seen considerable development in the right direction in a short amount of time. One can hope that this is the harbinger of WPS becoming an undeniably feminist tool. Until then, though, there is enough within its existing provisions to improve the UN's response to sexual exploitation and abuse, even more so if it were to be combined with other explicitly human rights-based frameworks, though how the UN would be to go about that raises a host of questions of its own.

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