

## WHAT MECHANISMS FOR THE FIGHT AGAINST THE IMPUNITY OF PEACEKEEPERS PERPETRATORS OF WAR CRIMES.

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*The credibility of peacekeeping missions (PKOs) depends on several factors, in this case their effectiveness, the short duration of their operations but also their ability to deliver justice in the event of offenses committed by one of theirs. However, it turns out that this criterion relating to justice has been greatly lacking in recent years, particularly in that a phenomenon of impunity for peacekeepers committing offenses has developed. In this work, the author aims to solve this problem. To this end, it presents the factors at the origin of impunity. The author then demonstrates the legality and possibilities of implementing international justice before finally exposing the importance of the action of the Prosecutor at the International Criminal Court (PICC) and the Secretary General of the United Nations (SGUN) for the implementation of this justice.*

**Keywords:** OMP, justice, injustice, impunity, international justice, offense, victims, civilians, GPICC, SGUN, peacekeepers

### INTRODUCTION

The international security mechanism that constitutes the blue helmets is nowadays facing a certain number of problems which undermine its credibility. The problem that will particularly attract our attention is that of the impunity of peacekeepers. By impunity it is a question of the absence of justice for people who are victims of offenses committed by UN soldiers<sup>1</sup>. This phenomenon began to develop at the beginning of the 1990s and took on a completely different scale at the beginning of the 2000s. To deal with it, the UN therefore took a certain number of coercive measures including, first of all, a zero-tolerance policy<sup>2</sup> which provided for responses such as repatriation, a ban on serving in security-related missions, peace, judgment by the State of origin as well as financial sanctions; The establishment of an independent commission<sup>3</sup> responsible for producing a report evaluating the effectiveness of the fight against rape. The establishment of a special coordinator to improve the UN response and even a Security Council resolution indicating a series of guidelines to help put an end to this phenomenon<sup>4</sup>. However, despite these measures, we realize that the situation of impunity still persists, particularly through examples of peacekeepers who find themselves under denunciation and accusation but who

<sup>1</sup> Some examples are the victims of sexual abuse by soldiers of peacekeeping missions in the CAR, in Haiti, in Congo

<sup>2</sup> Secretary-General's Circular Special Provisions to Prevent Sexual Exploitation and Abuse March 22, 2005

<sup>3</sup> The panel issued a report named "taking on sexual exploitation and abuse by UN peacekeepers personnel in December 2015

<sup>4</sup> This is resolution SC resolution 2272 taken dated March 11, 2016 which expressed the concerns of the CS on the desire to hide cases of abuse of blue helmets and which recommended measures to improve the fight, among other things, the wearing of uniforms, the introduction of covers, limitation of contacts



continue to work on the ground; complaints against UN agents committing offenses which are not followed by any disciplinary action or even an investigation by the UN administration; peacekeepers who, once repatriated, escape any sanctions from their national justice system. This situation will therefore produce deep resentment towards the entire UN system, particularly on the part of the civilian population who instead of benefiting from the protection of the blue helmets will find themselves victims of the latter. The manifestation of this resentment then being hostilities against the blue helmets, the rejection of missions in different places where they are deployed<sup>5</sup>. This profound deterioration of the situation therefore calls for a particular look at this problem of impunity, hence our interest, notably through the questioning of knowing, what are the factors which maintain this impunity and what solutions can be taken to remedy it?

### I. The factors behind the impunity of peacekeepers

Several factors can justify the impunity of peacekeepers. These include, among other things, the rules of immunity, jurisdictional privileges, the weakness of judicial systems and the political ill will of States. Regarding immunity, it is a grant granted to UN personnel given the sensitivity of their function. On February 13, 1949, the United Nations General Assembly adopted the Convention on the Privileges and Immunities of the United Nations. This convention, as its name indicates, devotes a certain number of advantages to United Nations personnel. These advantages include, among other things, the recognition of a legal personality<sup>6</sup> in the territory of the place where the mission is carried out, the provision of permission to pass, facilities for obtaining visas, tax exemption. The holders of these advantages are expressly listed in the convention. These include, among others, United Nations experts, representatives<sup>7</sup> of Member States. UN peacekeepers are not expressly cited by the convention, however, section 36 of the law on the privileges and immunities of United Nations provides for the possibility of extending by agreement these immunities to other members. This article states as follows: “The Secretary General may conclude, with one or more Members, additional agreements adjusting, with regard to this Member or these Members, the provisions of this convention. These additional agreements will in each case be submitted to the approval of the General Assembly”. It is therefore on the basis of this article that immunity and privileges are extended to blue helmets through various conventions, namely: The Status of Forces Agreement (SOFA) which is an agreement concluded between two States which determines the terms of an intervention and regulates the conditions of the presence of armed forces on foreign territory. The Memorandum of Understanding (MoU) which is a legal tool whose aim is to develop converging intentions and a common line of action between the different stakeholders in peacekeeping missions. The rules of engagement which for their part are conventions by which the rules and conditions for the use of force are defined.

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<sup>5</sup> Refusal in Sudan of a peacekeeping mission, rejection in 2022 of the MINUSMA, peacekeeping mission in Mali, requests during the UN General Assembly in September 2023 for the departure of MONUSCO, peacekeeping operations in Congo.

<sup>6</sup> According to the French civil code, this is the ability to hold rights and obligations. With regard to blue helmets, the law on privileges and immunities of blue helmets give them rights such as that of owning property or even taking legal action in the territory where they carry out the mission

<sup>7</sup> Section 16 of the convention on privileged and immunity “For the purposes of this article, the term “representatives” is considered to include all deputy delegates, advisors, experts technical staff and delegation secretaries



The privilege of jurisdiction that some authors call immunity from jurisdiction for its part is the right given to certain people to appear before a jurisdiction other than that to which the rules of common procedural law attribute jurisdiction<sup>8</sup>. This privilege has been claimed for peacekeepers by a certain number of States including the United States<sup>9</sup>. It thus provides that the people who benefit from it are not judged by the State where the offense was committed but by their State of origin<sup>10</sup>. Unfortunately, the observation is that once the people who benefit from it are repatriated home, they are not subject to any legal action.

Beyond these rules of immunity and jurisdictional privileges, other factors such as the nature of certain legal systems which give little importance to offenses relating to gender or sexual nature, the weakness of legal systems of developing countries and finally, as already briefly mentioned above, the lack of political will of certain States to submit the blue helmets to their responsibility.

## II. Legality and the possibilities of applying international justice

Given the difficulty of having justice rendered both by the national system of the State in which the mission takes place and that of the troop-contributing States, it is important to find solutions because the credibility of the United Nations in depends. The engagement of blue helmets, particularly during robust peacekeeping missions<sup>11</sup> indeed presents deep contacts with the humanitarian law and the judicial mechanisms associated with it. In this regard, we note the military commitment of blue helmets in robust peacekeeping missions. According to the rules of the Geneva Convention<sup>12</sup>, once a person is militarily engaged even in a national conflict as part of an organized armed force and obeying instructions, he constitutes a party to the conflict and is therefore required to respect humanitarian law<sup>13</sup>. The offenses they commit in such a situation constitute violations of humanitarian law. Article 7 paragraph 2 subparagraph f) of the Rome Statute provides for this purpose that offenses such as forced sterilization or any other form of sexual violence, namely rape, forced pregnancies, sexual slavery, constitute serious offenses to the Geneva Conventions (ICC).

These contacts with humanitarian law therefore open the way to the application of international justice, in this case the jurisdiction of the ICC and universal jurisdiction; With regard to the jurisdiction of the ICC, Article 5 of the Rome Statute defines the different categories of offenses of which the ICC is aware, namely war crimes, crimes against humanity, genocide, crimes of aggression and Article 8 (xxii) of the same statute provides that sexual crimes<sup>14</sup> constitute war crimes and are therefore punishable by

<sup>8</sup> <https://www.dictionnaire-juridique.com/definition/privilege-de-jurisdiction.php>.

<sup>9</sup> Statement by John D. Negroponte US permanent representative to the United Nations at the U security council in New York at July 10. 2002

<sup>10</sup> The reasons given are in particular the difficult context in which the peacekeepers operate and to which we should not add trials for acts committed, but also the poor quality of the judicial system of the States to which missions are generally sent

<sup>11</sup> These are missions where blue helmets are required to use force and carry out missions such as the protection of civilians

<sup>12</sup> The 4 Geneva Convention plus the three additional protocols for international conflict and the article 3 of the three Geneva convention and the additional protocol 2 for national conflicts

<sup>13</sup> Common article 3 of the 4 Geneva Conventions plus the second additional protocol

<sup>14</sup> in times of conflict by a party to the conflict



trial before the ICC. Universal jurisdiction for its part is a principle which makes it possible to transcend a certain number of rules of jurisdiction, including the criterion of territoriality and personality, to allow the judgment of violators of the law in any place where they are arrested. This principle is found in numerous international texts, namely the Geneva Convention, the Genocide Convention of December 9, 1948, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1986.

Concerning the possibilities of the application of international justice. The aim here is to demonstrate that there are no, or at least no more, legal obstacles to its application. Indeed, on July 1, 2002, the United Nations Security Council adopted resolution 1422 at the initiative of the United States for a period of one year which it later renewed for another 12 months<sup>15</sup>. The resolution notably provided for immunity before the international criminal court for soldiers whose State of origin was not a party to the Rome Convention. This resolution was not renewed due to a certain number of abuses committed by soldiers from states benefiting from immunity<sup>16</sup>. The refusal of the international community to renew this resolution therefore testifies to the common desire to fight against impunity but above all to allow the ICC to fully exercise its jurisdiction.

Article 27 of the Rome Statute<sup>17</sup> for its part prohibits the invocation of any official status to decline the jurisdiction of the court.

As we have just seen, the application of international justice to offenses committed by UN peacekeepers is not only legal but also perfectly feasible. It is therefore up to those on whom this responsibility rests to take action to implement it.

III. The importance of the action of the Prosecutor at the International Criminal Court (PICC) and the Secretary General of the United Nations (SGUN) for the implementation of this justice.

The PICC is the subject of numerous criticisms. Many States have in fact withdrawn from the Treaty of Rome and many other States<sup>18</sup> are threatening to do so denouncing the inefficiency<sup>19</sup> of the court notably its inability to prosecute all offenses falling within its jurisdiction. The attitude of the PICC is in fact that of selective action. This selective action consisting of the manifestation of interest in a certain type of offense against a disinterest in others including the offenses of the peacekeepers. The assumption of responsibility by the PICC is therefore decisive for the survival of the court. Even if the prosecutions are unsuccessful due to external factor as political pressure, material and practical difficulties they can nevertheless have a positive effect such as attracting the attention of the international community, having a deterrent effect and above all preserving the credibility of the Court.

The same criticisms addressed to the PICC are made to the GSUN. Indeed, in view of its inability to prosecute both its personnel and the members of peacekeepers accused of crimes, the SGUN is today accused of complicity. Such accusations having a strong impact on the credibility of the entire UN.

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<sup>15</sup> The Americans then threatened to impose their veto on the renewal of all peacekeeping missions, if this immunity was not guaranteed to them

<sup>16</sup> This includes abuses committed by American soldiers against Iraqi prisoners

<sup>17</sup> This article is title 'irrelevance of official status'

<sup>18</sup> Some African states who announce Their withdrawal are Burundi Gambia south Africa

<sup>19</sup> It is criticized for only attacking African leaders and crimes committed in Africa It is also criticize because it started strong by prosecuting presidents which quickly led to her downfall instead of starting by prosecuting less important authors which would have established her credibility and acceptance and would have facilitate the prosecution of more serious criminals



Despite the fact that The Secretary-General's fears of seeing commitment to peacekeeping missions diminish, it should act because that loss of contribution will just undermine the actual capacity of peacekeeping meanwhile the loss of credibility will undermine it for the future.

Another reason for acting is that more and more troop contributing countries are developing countries<sup>20</sup> which are not hostile to PKOs. The operation cannot therefore completely collapse. Should the Secretary General therefore demonstrate diplomacy and endeavor with countries wishing to participate, whether rich or developing, to build peacekeeping missions which are perhaps not as robust than the previous ones but respectful of human and humanitarian rights.

#### conclusion

At the end of this analysis on the factors favoring the impunity of peacekeepers and the solutions that can be brought to this problem, it emerges that there are in reality no legal obstacles to the prosecution of the latter but only political obstacles which it is therefore up to the PGCP and the GS UN to remove by demonstrating responsibility and diplomacy. Indeed it is important for the image of the UN that reprehensible acts are brought before justice, regardless of who they were committed by, even if later States oppose justice being rendered in the name of their sovereignty. Considering all the constraints that their mission faces actually, the most important thing for the PGCP and the UN SG now is not the outcome of the prosecutions or even respect for their decision but rather the demonstration of their independence, their neutrality and their desire to see justice reign. This is therefore the step that we are calling on them to take.

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#### REFERENCES:

- [1] ADVISORY SERVICES IN INTERNATIONAL HUMANITARIAN LAW of the International Committee of the Red Cross, War crimes according to the Rome Statute of the International Criminal Court and their source in international humanitarian law
- [2] Child right international network, sexual exploitation and abuse by UN peacekeepers (2022)
- [3] Caroline .P, Blue helmets accused of sexual abuse against vulnerable women in Haiti, marinique 1 (December 28, 2019)
- [4] Documentary published by Le Monde, UN, impunity at all levels - Scandal - Corruption - Public money, <https://youtu.be/zGcxBfTCJbc?si=ADrsa5-IRTUgwX6w> (2022)
- [5] Franckie Wong, the criticisms and shortcomings of peacekeeping, access accountability, 2019
- [6] Geneva Conventions of 1949 and their two additional protocols of 1977,
- [7] General Assembly of the United Nations, the Convention on the Privileges and Immunities of the United Nations, February 13, 1946

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<sup>20</sup> Some of the best troop contributing country these last years are, Nepal, Indonesia, Nigeria, Rwanda, Bangladesh, paskistan india  
[https://peacekeeping.un.org/sites/default/files/01\\_contributions\\_to\\_un\\_peacekeeping\\_operations\\_by\\_country\\_and\\_post\\_64\\_july\\_2023.pdf](https://peacekeeping.un.org/sites/default/files/01_contributions_to_un_peacekeeping_operations_by_country_and_post_64_july_2023.pdf)



- [8] Isidoro B. C, Universal jurisdiction General report, In International review of criminal law, cairn international, (2008)
- [9] John D. Negroponte, the Un security council, the international criminal court, and future of peacekeeping in bosnia, new York, July 10, 2002
- [10] Kellie askin, Global Ending for crime committed by peacekeepers,
- [11] Lauriane Hauchard, Blue helmets between protection and danger for the maintenance of peace, Le petit juriste (March 15, 2017)
- [12] Max du Plessis and Stephen Pete, CHAPTER 4 The ICC and Peacekeepers, Institute for security studies (ISS)
- [13] Menent S. C, The legal framework for the action of peacekeepers, cairn, (2015)
- [14] Secretary-General's Circular Special Provisions to Prevent Sexual Exploitation and Abuse
- [15] Svetlane .Z, The commitment to individual responsibility of peacekeeping agents, Editions de la Sorbonne (2014)
- [16] Svetlane .Z, The commitment to individual responsibility of peacekeeping agents, Editions de la Sorbonne (2014)
- [17] Safwene .G, Trial of peacekeepers in the DRC: "We fear a conviction just to please the UN, Africa (April 11, 2016)
- [18] The Conference of Plenipotentiaries of the United Nations, Rome Statute of the International Criminal Court (July 17, 1998)
- [19] United Nations, Office on Genocide Prevention and Responsibility to Protect
- [20] United Nations peacekeeping, Ten rules code of personal conduct of for blue helmets,
- [21] United nation peacekeeping, Minusca information note (March 10, 2023)
- [22] United nation security resolution 1422