

Peacekeepers as unpunished perpetrators: “The invisible line between Impunity and Diplomatic Immunity in Human Trafficking”

by
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Introduction

Human Trafficking has become the third most profitable business for organized crime after drugs and arms trade¹. Although slavery was abolished in the 19th century and the Universal Declaration of Human Rights established in 1948 that “all human beings are born free and equal in dignity and rights”². Degrading or inhuman treatment of men, women and children, however, has not been eradicated completely.

Nowadays, human slavery has adopted a new face of trade that varies from the original form of the 19th century, creating a global clandestine market. In 2012, the International Labour Organization (ILO) estimated a number of 20.9 million victims of human slavery worldwide. Most of them are exploited in the private economy by individuals or enterprises. Of the total number of victims 68% are held in forced labour exploitation such as agriculture, construction and domestic work or manufacturing, 22% are working in forced sexual exploitation, a market in which women and children are the most recurrent victims³ and 10% in state-imposed forced labor in prisons, in work imposed by the state military or by rebel armed forces. However, the statistics of trafficking victims cannot be completely measurable due to the lack of accountability of many governments and international institutions and to the illegal nature of human trafficking.

The complex nature of this organized crime relies on multiple political, economical and social inter-related factors such as manmade disasters like state and inter-state wars, corruption, poverty, unemployment, migration, displacement and humanitarian intervention in conflicts. All these factors create the perfect environment to strengthen a transnational crime that remains unpunished⁴. The impunity factor has given human trafficking the opportunity to grow and to involve day by day more collaborators due to its higher profits and also more victims. Some members of the security sector have not escaped being attracted to this clandestine business in some countries and on some peacekeeping missions.

¹ According to United Nations Regional Information Centre for Western Europe (UNRIC). Unric.org. 2014. Human Trafficking. [online] Available at: <http://www.unric.org/en/human-trafficking> [Accessed: 02 Feb 2014].

² Article 1 from the Universal Declaration of Human Rights. Un.org. 2014. The Universal Declaration of Human Rights. [online] Available at: <http://www.un.org/en/documents/udhr/> [Accessed: 02 Feb 2014].

³ International Labour Organization (ILO). 2012. ILO Global Estimate of Forced Labour. Special Action Programme to Combat Forced Labour (SAP-FL). [report] Page 13.

⁴ “The number of convictions for trafficking in persons is in general very low. Notably, of the 132 countries covered, 16 per cent did not record a single conviction between 2007 and 2010” United Nations Office on Drugs and Crime in Viena. 2012. Global Report on Trafficking in Persons. Key Findings. [report] Viena: United Nations Publication, Page 7. In addition according to ILO, the number of criminal convictions of traffickers globally increased slightly from 3,969 to 4,746 in 2012.

The International Community has been more aware of the problem in recent years and has tried to combat and prevent the problem using law enforcement. The United Nations Convention Transnational Organized Crime published the “The Three P’s Protocol: Prevent, Suppress and Punished Trafficking in Persons” in 2003, which was ratified by more than 140 countries⁵ around the world. By ratifying the Convention, these countries accepted that they will criminalize Human Trafficking “by means of a specific offence in line with the Protocol”⁶ and implement all the necessary measures and legislations with the promise to prosecute any individual who violates this law without exemptions and to protect the victims.

In recent years strong and verified evidence has appeared from NGO’s like Human Rights Watch, The International Organization of Migration (IOM) or the last report of the Jordanian Prince Zeid Ra’ad Zeid Al-Hussein’s in the Democratic Republic of Congo “Comprehensive Review to Eliminate Future Sexual Exploitation and abuse in United Nations peacekeeping operations,”⁷ giving some examples of how peacekeepers were involved more directly in human trafficking during their time as law enforcers in Bosnia and Herzegovina⁸, Cambodia, Somalia and the DRC, among others; mostly in the sexual exploitation trade.

In 2003 the former UN Secretary General, Kofi Annan, discussed the participation of peacekeepers in sex trafficking and he affirmed that all the necessary measures to eradicate the problem inside the UN will be taken⁹. Nevertheless, the crime of sexual exploitation and abuse by peacekeepers in mission operations are not limited to the previously mentioned countries and is still appearing in other humanitarian interventions like Haiti, Sierra Leone or Liberia¹⁰.

The major challenge of this essay is to analyze the current involvement of peacekeepers in human trafficking, the not always possible prosecution of peacekeepers due to their diplomatic immunity and the United Nations and member states response to the problem. Additional information about exceptions in order to remove diplomatic immunity will be given.

I. Peacekeeping operation actors and roles in general

1.2 Who are the actors behind the term “Peacekeepers”?

⁵ United Nations Convention against Transnational Organized Crime and the Protocols Thereto. 2003. Protocol to Prevent, Suppress and Punished Trafficking in Persons. Status of Ratification - Signatories. [report] United Nations Office on Drugs and Crime, Page 1. Available at: <http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>

⁶ Ibid. Article 5.

⁷ Prince Zeid Ra’ad Zeid al-Hussein. 2005. A comprehensive Strategy to Eliminate Future Sexual Exploitation and abuse in united nations peacekeeping operations Report to the un Special committee on peacekeeping operations, (a/59/710) [Report] Available at: <http://www.un.org/depts/dpko/ctte/sea.htm>.

⁸ Human Right's Watch. 2002. Hopes Betrayed: Trafficking of women and girls to Bosnia and Herzegovina for forced prostitution. [report] Bosnia and Herzegovina Vol. 14, No. 9 (D)

⁹ Secretary General, U. N. 2003. Special Measures For Protection from Sexual Exploitation and Sexual Abuse. [report] UN Secretary-General (UNSG), which established clear guidelines of acceptable conduct by United Nations staff. Available at: <http://www.refworld.org/docid/451bb6764.html> [accessed 04 February 2014]

¹⁰ Martin, S. 2005. Must boys be boys? Ending sexual exploitation and abuse in UN peacekeeping missions. [report] Refugees International. Available at: http://www.un.org/en/pseataaskforce/docs/must_boys_be_boys_ending_sea_in_un_peacekeeping_missions.pdf

Peacekeeping operations¹¹ in post conflict situations involve more actors than only “The Blue Helmets” of the United Nations, who are the troops provided by member states¹² for the mission and come from many different countries and cultures. Also, private military contractors, members of local and international Non Governmental Organizations (NGO’s) and religious groups are present in these operations. Other agencies involved are the “coalitions of the willing such as the International Security Assistance Force (ISAF), security alliances such as the North Atlantic Treaty Organization (NATO), regional organizations such as the European Union and the African Union and sub-regional organizations such as the Economic Community of West African States,”¹³ or the Organization for Security and Cooperation in Europe (OESC), the UN International Police Task Force (IPTF) and the Stabilization Force (SFOR), among others.

This multi-agency complex environment should involve more coordination and cooperation of each of the members in order to have coherent impact in the peace building process and mission¹⁴. Therefore, as we are going to analyze further, the involvement of one or more actors in local illegal activities strengthen transnational organized crimes such as human trafficking and corruption inside the local and international legal system. In the end, the missions have dealt with more problems originated by peacekeeping forces than the one’s they came to solve.

What is the purpose of peacekeeping operations?

Peacekeeping forces travel with the purpose to “provide security and the political and peacebuilding support to help countries make the difficult, early transition from conflict to peace (...) but also to facilitate the political process, protect civilians, assist in the disarmament, demobilization and reintegration of former combatants; support the organization of elections, protect and promote human rights and assist in restoring the rule of law.”¹⁵

Tragically, most of the time this purpose has been disputed due to the involvement of troops in transnational crimes like the “White Slavery”¹⁶. NGO’s that witnessed the

¹¹ “Peace operations refers to a whole range of multidimensional, multifunctional and complex peace operations, authorized by the UN Security Council, that involve not only military but also various civilian and police components”. Aoi, C., De Coning, C. and Thakur, R. C. 2007. Unintended consequences of peacekeeping operations. Tokyo: United Nations University Press. Page 4.

¹² Member States are the 193 current countries that integrate the United Nations and through their membership had accepted the obligations contained in the United Nations Charter. In this case, the member states or contributing countries are the one’s who sent their selected troops to peacekeeping operations or humanitarian interventions and the soldiers are not chosen directly by the United Nations organization. Un.org. 2014. United Nations member States - Non-member state maintaining observer mission. [online] Available at: <http://www.un.org/en/members/about.shtml> [Accessed: 05 Feb 2014].

¹³ Aoi, C., De Coning, C. and Thakur, R. C. 2007. Unintended consequences of peacekeeping operations. Tokyo: United Nations University Press. Page 4.

¹⁴ Ibid. Page 4.

¹⁵ What is Peacekeeping? United Nations Peacekeeping Operations Definition. Un.org. 2014. What is peacekeeping? United Nations Peacekeeping. [online] Available at: <https://www.un.org/en/peacekeeping/operations/peacekeeping.shtml> [Accessed: 05 Feb 2014].

¹⁶ “White Slavery is a recent term referred to Sex trafficking”. The Mann Act (18 U.S.C.A. § 2421 et seq.) also known as the White Slave Traffic Act, is a federal criminal statute that deals with prostitution and Child Pornography. Enacted in 1910 and named for its sponsor, Representative James R. Mann of Illinois, it also was used to prosecute men who took women across state lines for consensual sex. Representative Mann introduced the act in December 1909 at the request of Chicago prosecutors who claimed that girls and women were being forced into prostitution by unscrupulous pimps and procurers. The term white slavery became popular to describe the predicament these females faced. It was alleged that men were tricking,

problem, members of UN Offices in different countries, local people, local officers and whistleblowers (some SFOR officers or IPTF monitors like the American police officer Katherine Bolkovac¹⁷) have reported that some members of the UN troops and private military contractors¹⁸ from NATO-led Stabilization Force (SFOR) or IPTF's police officers from DynCorp¹⁹ were involved in the trade of women and children during their time of service in peacekeeping operations like in the case of Bosnia and Herzegovina (BiH) after the war²⁰.

The correlation between Sex trafficking and Peacekeepers has been under investigation by the United Nations Security Council. Some measures had been purposed as the Extraterritorial Jurisdiction, Zero Tolerance policy and the Special Measures for Protection from Sexual Exploitation and Sexual Abuse. All of them related to the expected behavior of peacekeeper forces in extraterritorial missions and the consequences they would face in case of infraction of these laws. Even though the Zero Tolerance policy had been implemented during the BiH mission, the cases of sexual harassment, exploitation and abuse had appeared across the Balkans' region.

The implementation of these measures is very important, but even more is the proper selection and appropriate training of the troops. These measures would continue to have a weak impact if the member states of the UN do not enforce these policies in the given trainees before and after their deployment in the mission. It is important to stress the need of cooperation between the Member States and UN to have a coherency between written purposes and real human rights protection. Moreover, the written measures or policies for UN personnel will not protect their troops of the tempting profitable crime if there is no appropriate training to prevent their involvement and also if there are no further consequences than dismissal when they infract the established law.

2. Peacekeepers and Sex Trafficking: The case of Bosnia and Herzegovina (BiH)

2.1 The environment after the conflict

The presence of peacekeepers in Bosnia

In December 14, 1995 the Dayton Peace Agreement was signed to end the conflict between the republics of the Socialist Federation of Yugoslavia. In order to enforce peace in the region, the presence of international peacekeepers, international police and civilian contractors was necessary.

coercing, and drugging females to get them involved in prostitution and then forcing them to stay in brothels. Grittner, F. K. 1990. White slavery: Myth, Ideology and American Law, New York: Garland Pub.

¹⁷ For more information about the american ex-police officer Kathryn Bolkovac and her role in Bosnia and Herzegovina during the post-war see also: Kathryn Bolkovac. 2014. Kathryn Bolkovac. [online] Available at: <http://www.bolkovac.com/> [Accessed: 10 Feb 2014].

¹⁸ Human Right's Watch. 2002. Hopes Betrayed: Trafficking of women and girls to Bosnia and Herzegovina for forced prostitution. XL. SFOR Contractors Involvement [report] Bosnia and Herzegovina Vol. 14, No. 9 (D) November 2002. Page 63.

¹⁹ Dyn-intl.com. 2014. Operations and Maintenance | DynCorp International. [online] Available at: <http://www.dyn-intl.com/what-we-do/operations-and-maintenance/> [Accessed: 07 Feb 2014].

²⁰ Human Right's Watch. 2002. Hopes Betrayed: Trafficking of women and girls to Bosnia and Herzegovina for forced prostitution. [report] Bosnia and Herzegovina Vol. 14, No. 9 (D) November 2002.

The objective of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) was the implementation of the Peace Agreement on Bosnia and Herzegovina and the establishment of “the rule of law by assisting in reforming and restructuring the local police, assessing the functioning of the existing judicial system and monitoring and auditing the performance of the police and others involved in the maintenance of law and order”²¹. With their resolution 1035, the Security Council decided to establish the United Nations ITPF force and the United Nations Civilian Office in 21 December 1995, headed by Jacques Paul Klein.

Integration of the International Community in BiH

The NATO Implementation Force (IFOR) mission was to guarantee the end of hostilities and separate the armed forces of the Federation of Bosnia and Herzegovina and the one's of the Republika Srpska. IFOR was a peace enforcement operation of 60,000 thousand soldiers which demarcate the inter-entity boundary and the removal of heavy weapons ²².

IFOR began providing support to organizations involved in overseeing the implementation of the civilian aspects of the Dayton Peace Agreement, including the Office of the High Representative, the Organization for Security and Co-operation in Europe and the United Nations²³.

In 1996, after one year mandate, SFOR came to support the IFOR due to the unstable situation.

The Stabilization Force (SFOR, lead by NATO) was a multinational peace force deployed in Bosnia in 1996. Their mission was to “deter hostilities and stabilize the peace, contribute to a secure environment by providing a continued military presence in the Area Of Responsibility (AOR) ”[...] To provide a safe secure environment, to establish a unified, democratic Bosnia and Herzegovina, to rebuild the economy, to allow the return of displaced persons and refugees to their prewar homes”²⁴.

The International Police Task Force (IPTF) was responsible for monitoring and advising local Bosnian police. The IPTF force of almost 1,411 monitors “was comprised of police officers from nearly fifty UN member states, worked under the auspices of the United Nations Mission in Bosnia and Herzegovina” (UNMIBH)²⁵.

The situation of violence against women

During the conflict in BiH around 20,000²⁶ to 30,000 women and girls suffered sexual abuse and violence in camps and in the cities²⁷. The United Nations gender office was

²¹ Un.org. 2014. UNMIBH: United Nations Mission in Bosnia Herzegovina - Background. [online] Available at: <http://www.un.org/en/peacekeeping/missions/past/unmibh/background.html> [Accessed: 16 Feb 2014].

²² NATO. 2014. NATO - Peace support operations in Bosnia and Herzegovina. [online] Available at: http://www.nato.int/cps/en/natolive/topics_52122.htm [Accessed: 16 Feb 2014].

²³ Ibid.

²⁴ Nato.int. 2014. Stabilisation Force in Bosnia and Herzegovina - SFOR MISSION. [online] Available at: <http://www.nato.int/sfor/organisation/mission.htm> [Accessed: 16 Feb 2014].

²⁵ Human Right's Watch. 2002. Hopes Betrayed: Trafficking of women and girls to Bosnia and Herzegovina for forced prostitution. The International Community in Bosnia and Herzegovina [report] Bosnia and Herzegovina Vol. 14, No. 9 (D) November 2002. Page 14.

²⁶ Unicef.org. 2014. Sexual violence as a weapon of war. European Community fact-finding team. [online] Available at: <http://www.unicef.org/sowc96pk/sexviol.htm> [Accessed: 15 Feb 2014].

working with local and international community members to understand and prosecute the crimes against women that had arisen due to the tension between ethnic groups.²⁸ For example, the mass rapes that appeared in the conflict as strategy of ethnic cleansing used by the Serbs. They believed that “the use of rape was a weapon of war” and that “the rape victims and their families who escape these atrocities will never want to return to the site of their torture”.²⁹

One of the major challenges during and after the conflict was the prosecution of perpetrators for violence against women. Many crimes were ignored by the law due to discrimination or justification of the violence because of the ethnic origin of the women. As a response to established law and order in the region, the UN implemented the International Criminal Tribunal for the former Yugoslavia (ICTY). The Tribunal was in charge of bringing to justice the perpetrators who had committed crimes during the war. In addition, “the Tribunal advanced the development of international justice in the realm of gender crimes by enabling the prosecution of sexual violence as a war crime, a crime against humanity and genocide”.³⁰

The situation became worse when the local problem of violence turned rapidly into forced prostitution and trafficking of women. In spite of the fact that the written law was existent to protect women and civilians, more problems were coming to the surface and the law protection was far from being sufficient due to the involvement of international and local officers in the crime.

2.2 Peacekeepers and sex trade

The increase of sex trafficking

After 1995 Bosnia and Herzegovina was living under post-interwar conditions, where the basic needs of the people like food, water or housing were not met. There was no employment, the cities were in ruins and the rule of law and order was almost non-existent. These conditions created the perfect environment to make a billionaire underground business from sex trafficking.

According to Human Rights Watch interviews of victims of sexual trafficking in BiH, the women were recruited under legal terms. Many of them believed that they would work in countries like England, France or the US as models, waitresses, dancers, cleaning maids or nannies to name a few. The difficult conditions that they faced in their countries such as Moldova, Ukraine, Bulgaria or Romania coupled with the dissolution of the Soviet Union and Yugoslavia, created a chaotic environment for many people in many regions in the

²⁷ icty.org. 2014. ICTY - TPIY : Landmark Cases. Link between rape and ethnic cleansing[online] Available at: <http://www.icty.org/sid/10314> [Accessed: 15 Feb 2014].

²⁸ According to Madeleine Rees, the gender expert and head of Office in Bosnia and Herzegovina of the High Commissioner for Human Rights in that time. “Madeleine Rees also worked on the rule of law, gender and post-conflict, transitional justice and the protection of social and economic rights”. Women’s International League for Peace and Freedom. Wilpfinternational.org. 2014. WILPF | Madeleine Rees. [online] Available at: <http://www.wilpfinternational.org/madeleine-rees/> [Accessed: 15 Feb 2014].

²⁹ Aydelott, D. 1993. Mass Rape During War: Prosecuting Bosnia Rapists Under International Law. Emory International Law Review, 7 pp. 586

³⁰ icty.org. 2014. ICTY - TPIY : Landmark Cases. Link between rape and ethnic cleansing [online] Available at: <http://www.icty.org/sid/10314> [Accessed: 15 Feb 2014].

East of Europe. These difficulties convinced them to migrate to other countries in pursuit of employment and to better their own lives or their children's. In the end all their hopes were betrayed and they were forced into sex slavery.

After the deployment of thousands of peacekeepers in Bosnia and Herzegovina, the business of sex trafficking started to flourish³¹. Sarah Medelson, author of *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans*, sustains that "as the number of peacekeepers increased in the mid-1990s, the number of females trafficked to the region jumped. As the number of peacekeepers decreased, those working with victims report that, by 2003, the number of females assisted had significantly dropped".³²

If we consider the number of trafficked women in the region as a contraband flow approach of demand and supply, we can infer that with the arrival of peacekeepers, of whom the majority are men³³, the demand for sexual services would likely increase and therefore the supply has to grow³⁴. In addition to this argument, it is important to remember that prostitution was illegal in the region. Therefore, the demand would have never been satisfied if some local and international authorities would not have allowed it. One of the reasons for having a flourishing sex trade after 1995 was probably the collaboration of the IPTF's monitors and local officers in the business. In order to have an illegal market in operation, the traffickers have found some allies in the legal system, who protected them and warned them of any inconvenience that could threaten their business.

From sexual seekers to traffickers...

The involvement of peacekeepers in trafficking is varied. "They have been identified buying and selling individual women for sexual services, transporting trafficked women in UN vehicles and engaging (or overlooking) in document forgery to facilitate the movement of trafficked persons"³⁵. Ben Johnstone, who was working as an aircraft technician at Comanche Base, one of the two US bases in Bosnia at the DynCorp hangar, revealed information about the involvement of his co-workers and supervisors in the trade, which included sex with minors³⁶, rape and buying and selling women for sex³⁷. The IMO 2004 Report informed that "especially close to military bases the most frequent customers of trafficked victims have been foreigners and in particular NATO/SFOR members. For example near the 'Eagle' NATO Base there are dozen [sic] of night bars and the most frequent customers are SFOR members."³⁸ IMO based the report on interviews with law enforcement criminal informants in Bosnia.

³¹ Due to Human Trafficking is an organized crime, there's no clear and reliability data that completely proves in numbers that this argument is a fact. Human Rights Watch or Amnesty International, have tried to sustain this argument by the number of rape cases or human trafficking victims with the number of troops that were present in time. Also IMO have sustained that after the peacekeepers were living in Bosnia, the number of trafficked victims decreased in the region.

³² Mendelson, S. E. 2005. *Barracks and Brothels, Peacekeepers and Human Trafficking in the Balkans*. [e-book] Washington: CSI Center for Strategic and International Studies. p. Page 12. [Accessed: 05 Feb 2014].

³³ For more information about masculinity in Peacekeepers, see also: Kirby, K. M. 2011. *Peacekeepers, the Military and Human Trafficking: Protecting Whom?*. University of St. Thomas Law Journal, 6 (1). Page 236.

³⁴ Friesendorf, C. 2009. *Strategies against human trafficking*. Chapter 8: *Human Trafficking and Peacekeepers* Vienna: National Defence Academy and Austrian Ministry of Defence and Sports in cooperation with Geneva Centre for the Democratic Control of Armed Forces. Page 299.

³⁵ *Ibid.* Page 302

³⁶ According with Art. 1 of the Convention of the Rights of the Child, women and men under eighteen years old are considered as minors. Ohchr.org. 1990. *Convention on the Rights of the Child*. [online] Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [Accessed: 16 Feb 2014].

³⁷ Corpwatch.org. 2002. *CorpWatch : US: DynCorp Disgrace*. [online] Available at: <http://www.corpwatch.org/article.php?id=11119> [Accessed: 18 Feb 2014].

³⁸ Mendelson, S. E. 2005. *Barracks and Brothels, Peacekeepers and Human Trafficking in the Balkans*. [e-book] Washington: CSI Center for Strategic and International Studies. Page 11. [Accessed: 05 Feb 2014].

As mentioned before, the role of the IPTF in Bosnia was to support and supervise the local police, to enforce the undermined law, to monitor the advances, procedures and methods of the local police investigations, for which SFOR was also responsible³⁹. It is important to stress the point that their obligation and responsibility, according to Resolution 1088 established by the Security Council in 1996, was also to report, investigate or assist investigations into human rights abuses caused by law enforcement personnel, local and international officers. Some of the obstacles to overcome were the rotation among IPTF monitors⁴⁰; “combined with their desire to close cases and maintain good relations with the local police, stymied supervision of investigations and often precluded follow up on existing cases”.

Moreover, the local police received bribes from the owners of brothels to keep their illegal operations running both inside and outside Bosnia. They were also part owners of the bars and night clubs, guards of the brothels, clients, and informed brothel owners of planned raids⁴¹. Also, the Foreign Affairs Office of Bosnia was cooperating by issuing false passports to the trafficked women with false data⁴². In reward, IPTF, SFOR, local officers and employees of the Foreign Affairs Office who were participating in the sex trade, had received sexual service without cost⁴³. According to the Bolkovac reports, 1,800 officers from 45 countries of the UN Police were “not only using trafficked women for sexual services but also they were on the traffickers’ pay roll. They were also giving warnings on raids to the brothels owners, returning girls who escaped from the bars or when rescued girls were repatriated letting the traffickers know where they could find them to recovered them and put them back into the system”⁴⁴.

Contradictory arguments...

The IPTF’s and SFOR established duties and responsibilities that were hindered by the lack of transparency from both local and international authorities, accountability and consistency. Most of the participation of peacekeepers in trafficking has been known due to testimonies of victims, whistleblower’s and dismissed IPTF’s monitors. The lack of accountability of victim’s cases and corrupted local and international officers make it more difficult to find reliable data that provide information to understand the complexity of human trafficking and then take the necessary measures to combat it. What is more surprising is that international institutions such as the United Nations and the member states do not improve themselves to develop a backup system that can provide them information of how many people of their personnel have been involved in the sex trade beside the sent IPTF’s monitors or NGO’s reports.

³⁹ “SFOR had Multinational Specialised Units (MSU) that assisted the EU Police Mission (EUPM). The EUPM is responsible for helping the Bosnian authorities develop local police forces that meet the highest European and international standards, through monitoring, mentoring and inspecting police managerial and operational capacities”. NATO: Peace support operations in Bosnia and Herzegovina. NATO. 2012. NATO - Peace support operations in Bosnia and Herzegovina. [online] Available at: http://www.nato.int/cps/en/natolive/topics_52122.htm [Accessed: 16 Feb 2014].

⁴⁰ The police officers serve between six and eighteen months. They are rotated and replaced by new police officers. Ann Marie Orlor, UN Police advisor and Director of the UN Police Division, Office of Rule of Law and Security Institutions, Department of Peacekeeping Operations.

⁴¹ Human Right’s Watch. 2002. Hopes Betrayed: Trafficking of women and girls to Bosnia and Herzegovina for forced prostitution. [report] Bosnia and Herzegovina Vol. 14, No. 9 (D) November 2002. Page 28 to 33.

⁴² Ibid. *Fake and Forged Documents*. Page 33 - 34.

⁴³ Ibid. Page 18, 28 - 33.

⁴⁴ What the UN Doesn’t Want You to Know. 2012. Interview with Kathryn Bolkovac. The Telegraph, 06 Feb.

These crimes had remained in silence during the years until the cases of Johnstone and Bolkovac were in the press. The former head of UNBiH, Jacques Paul Klein has denied that during his Tenure UN troops were involved in the crime and cover-ups related to sex trade have existed due to the implementation of the Zero Tolerance Policy for sexual misconducts. In contrast, Klein's partner in BiH, Madeleine Rees, has claimed that UN members were aware of the crimes but no measure to stop it was taken. Ironically, Klein faced the same accusations of UN personnel involved in sex trade under his tenure in Liberia from 2003 to 2005.

In contrast to Klein's statement, one of the brothel owners in Prijedor (a town in Bosnia) alleged that the raids to brothels and bars came after he refused to pay protection money to the IPTF's officers. Six of them were repatriated for "exceeding their duties"⁴⁵ without further explanation. This event put in question the credibility of the UN high officer's statements, who sustained that no peacekeeper was involved in sex trade. Moreover, put in evidence that the crimes were covered up by the same institution likely due to the weak response of member states to prosecute its officers or to internal UN corruption problems. Madeleine Rees, the representative for the UN High Commissioner for Human Rights in Bosnia, stated: "The truth about the Prijedor raids and the subsequent resignation of the officers involved has never been made apparent."⁴⁶

The IPTF monitors who attempted to alert their supervisors to the involvement of their colleagues in human trafficking faced retaliation,⁴⁷ like in the case of Bolkovac and Johnstone who were dismissed from the mission. Until now, both whistleblowers have not received any kind of protection from the US American government, United Nations or from their contractor, DynCorp. It is important to emphasize that the lack of protection for victims and whistleblowers can hinder the possibility to obtain their confessions. Without their testimonies or proofs it is impossible to construct a case against the perpetrators and neither investigation nor prosecution can be possible. In addition to this argument, Maria Jose Fletcher, a supervising attorney from the Florida Advocacy Center in the U.S.A., has argued that "your evidence is a human being, so by taking care of the victim needs you are really taking care of your investigation".

What could be done differently is to take the testimonies of these people as an opportunity to understand better the reasons of why peacekeepers get involved in sex trade crimes instead of repressing or covering it for shame or fear of further political and economical consequences such as the loss of a further contract with the US Security Department in the case of DynCorp, the discredit of peacekeeping operations and the loss of funds and troops for them, among others.

3. The range between immunity and impunity

3.1 The International community response

The United Nations response

⁴⁵ Robson, T. 2002. Bosnia: The United Nations, human trafficking and prostitution - World Socialist Web Site. [online] Available at: <http://www.wsws.org/en/articles/2002/08/bosn-a21.html> [Accessed: 16 Feb 2014].

⁴⁶ Ibid

⁴⁷ Human Right's Watch. 2002. Hopes Betrayed: Trafficking of women and girls to Bosnia and Herzegovina for forced prostitution. [report] Bosnia and Herzegovina Vol. 14, No. 9 (D) November 2002. Page 55. *Kathryn Bolkovac in conversation at Garden Court Chambers on "Whistleblowing"(Part 1 and 2)* [online] Available at: http://youtu.be/hGOC_CI5FBE [Accessed: 26 Feb 2014].

The IPTF's monitors accused of involvement in human trafficking were repatriated for "sexual misconduct". The belief of the UNMIBH was that the host countries of IPTF and SFOR personnel will start the necessary investigations and follow their prosecution for human trafficking accusations in Bosnia⁴⁸. Andrei Shkourko, senior political affairs officer from the UN headquarters BiH explains: "The United Nations does not have the legal authority to take punitive measures against civilian police monitors made available by Member States for United Nations peacekeeping operations, and the disciplinary follow-up to their misconduct is the responsibility of the contributing countries. The options available to the United Nations in such cases are limited, therefore, to the administrative action of repatriation with the recommendation to the national authorities concerned to take the appropriate action against the individual in question. There is now a procedure in place to make the results of internal investigations routinely available to contributing countries for follow-up action. However, the mechanisms for ensuring follow-up by the authorities of the contributing countries need to be strengthened. We are aware of this need and we are trying to meet it.⁴⁹" In summary, the United Nations can not prosecute the officers for the crimes committed and have left the responsibility to the contributing countries to do it so.

The member states' response

Until 2002, no IPTF's monitors faced criminal investigation or charges in their home countries, according to the NGO Human Rights Watch and personnel involved in that time. One of the reasons alleged was the political immunity from criminal prosecution enjoyed by the IPTF and SFOR forces. The NATO and SFOR personnel were immune from receiving country's jurisdiction, from arrest/detention by local police, were not required to carry a passport or to pay import taxes, duties or fees. They enjoyed free and unrestricted passage through BiH and Croatia⁵⁰. In spite of the suggestion of the UN to contributing countries to take the necessary actions against their own nationals involved in crimes, the member states have not continued any further investigation and the crimes remain unpunished.

What could be done differently in this case was that the United Nations would have obligated the member states to follow coherently the established policies and allow internal investigations to their personnel. The diplomatic immunity jurisdiction should not be accepted as a valid reason to tolerate this kind of crimes in extraterritorial missions and to close internal investigations of peacekeeper's forces. Both sides are responsible of the misbehaviour of the troops and should work on finding solutions instead of transferring the responsibility to the other. These responses do not bring any benefit neither to the victims nor to the future monitors and officers.

⁴⁸ The United States Security Department have not directly hired the IPTF's for the BiH mission. His sub-contractor DynCorp was the one responsible in the recruitment of police officers. DynCorp did not take any measure against the perpetrators. None of the soldiers sent home faced any conviction from the United States Government for any allegation of their involvement in human trafficking in BiH.

⁴⁹ Human Right's Watch. 2002. Hopes Betrayed: Trafficking of women and girls to Bosnia and Herzegovina for forced prostitution. IX. Legal Immunity and Impunity for International Community members involved in trafficking.[report] Bosnia and Herzegovina Vol. 14, No. 9 (D) November 2002. Footnote 233. Page 46.

⁵⁰ Nato.int. 2003. Stabilisation Force in Bosnia and Herzegovina - SFOR MISSION. [online] Available at: <http://www.nato.int/sfor/organisation/mission.htm> [Accessed: 16 Feb 2014].

3.2 Diplomatic Immunity and Impunity

Diplomatic immunity defined by the Vienna Convention of 1961 established that “he/she shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions”⁵¹.

After the Vienna Convention, diplomatic immunity has been given to any individual who has served as peacekeeper in extraterritorial missions in order to achieve his or her duties. In the case of the peacekeepers in Bosnia, their involvement in sex trade was obviously not part of their duties during the UNMBIH and the crimes committed must not be ignored nor justified by diplomatic immunity jurisdiction.

The Vienna Convention in Art. 31, number 4 declares: “The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State”⁵². This means that member states can prosecute their own nationals who committed the crimes in extraterritorial missions. However, there exists the need to enforce the limits of this political immunity jurisdiction, which actually does exist in law and was explained to them before being deployed.

According to UN Procedures, “every single officer has gone through a Conduct and Discipline training before being deployed and a second one in the mission where they will be serve. These police officers have signed an undertaking upon his or her deployment stating that they have read and understood the conduct code for UN personnel in the mission area. This undertaking re-states the Zero Tolerance policy in the first person, making each of these police officers personally accountable. This Undertaking also states the consequences that they might face if they do not comply”⁵³. If these procedures were in the knowledge of each peacekeeper, how is it possible to explain their involvement in the sexual exploitation and trade. One of the possible explanations would be that many of them were completely aware of their right to diplomatic immunity jurisdiction, which could protect them of any prosecution attempt.

The Jordanian Prince Zeid Ra'ad Zeid Al-Husseini's in the UN panel discussion on Sexual Exploitation and Abuse in Conflict and Post-conflict Situations⁵⁴ criticized the conduct of member states as possible explanation of the weak international cooperation of member states to prosecute extraterritorial crimes committed in missions abroad: “We [member states] are cowardly hypocrites. We go to the Security Council with our foreign ministers

⁵¹ Vienna Convention on Diplomatic Relations. 1961. [e-book] Vienna: United Nations. http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf [Accessed: 17 Feb 2014].

⁵² Ibid. Art. 31, number 4.

⁵³ UN Police advisor and Director of the UN Police Division, Office of Rule of Law and Security Institutions, Department of Peacekeeping Operations, Ann Marie Orlor.

⁵⁴ This Panel was proposed by the General Secretary Ban Ki-moon after the screening “The Whistleblower” by Larysa Kondracki to discussed the involvement of peacekeeping operations worldwide in human trafficking. United Nations WebCast. 2011. Panel discussion: Sexual exploitation and abuse in conflict and post-conflict situations. [podcast] 14 Oct. Available at: <http://www.unmultimedia.org/tv/webcast/2011/10/panel-discussion-sexual-exploitation-and-abuse-in-conflict-and-post-conflict-situations.html> [Accessed: 08 Feb 2014].

and we speak of resolution 1325 [on women and peace security]⁵⁵, when at the same time we are instructing our lawyers who should be negotiating in the convention to create the sort of legal regime [that Madeleine Rees is also talking about in the same panel] to extend jurisdiction extraterritorial to our nationals, we tell our lawyers to basically reserved any result in that regard and essentially no one wants us to account for it". The noncompliance of the existent treaties by member states puts in question the credibility that the United Nations is capable to translate these ratified documents into actions worldwide and that the member states' compromise to preserve the protection of human rights is just for people in power or its own citizens instead of for people in vulnerable situations.

In addition, the lack of prosecution of IPTF's involved in human trafficking sends the message that any perpetrator or contractor can leave the mission place where they committed the crimes and remain unpunished. This impunity enforces the participation of peacekeepers in crimes instead of helping to prevent it.

Much of the time the offenses are just attributed to the United Nations but indeed as it was explained during this essay, the member states are the ones who choose this personnel and have control over their activities and success in missions. This is also the case if they subcontract companies to support them by providing international troops. In the specific case of the United States, the US Department subcontracted DynCorp Technical Services, a UK subsidiary of DynCorp Aerospace Operations Ltd., to maintain support for the US military and to recruit American officers for the IPTF in Bosnia. Up until now neither the US Security Department nor DynCorp have taken responsibility of the misconduct of its personnel in BiH and the crimes have remained unpunished due to their diplomatic immunity in extraterritorial missions.

In order to combat human trafficking, we have to enforce that international personnel do not participate in organized crimes and one of the steps to accomplish this objective is the prosecution of the internationals involved in this transnational crime. In addition, it is important to stress the need of coherent and responsible collaboration between United Nations and its member states in extraterritorial missions, mainly when problems like the involvement of troops in crimes appear. Without collaboration there is no solution.

4. Conclusions

Human Trafficking is a crime of an estimated 20.9 million victims. The number of victims continues to grow and the number of convictions remains very low. One of the reasons found in this essay is the involvement of local and internationals in sex trade. Shamefully, victims have been prosecuted for the possession of illegal documents, for illegal entrance or prostitution and the perpetrators remain free without any punishment. The involvement of peacekeepers in human trafficking has changed the old perspective of victims and traffickers.

What are the limits between immunity and impunity and its consequences in the fight against Human Trafficking?

⁵⁵Security Council Resolution 1325. 2000. [e-book] United Nations. Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325\(2000\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325(2000)). See also: United States Institute of Peace. n.d. What is U.N. Security Council Resolution 1325 and Why is it so Critical Today?. [online] Available at: http://www.usip.org/gender_peacebuilding/about_UNSCR_1325 [Accessed: 08 Feb 2014].

It is important to remember to each of the members involved in peacekeeping operations that the legal system was created to protect all people not only on a daily basis but also in times of vulnerability. What is more, the diplomatic immunity jurisdiction was created to protect the diplomatic personnel, who are head of states or in charge of extraterritorial missions, to realize their duties under unstable or difficult situations but not to cover up or tolerate crimes in extraterritorial missions.

Fortunately, this jurisdiction has also established the expulsion from diplomatic immunity when the person commit a crime not related to his or her duty.. This exception in the jurisdiction should be taken as a sufficient reason to prosecute ex-officers. Through the involvement of peacekeepers, diplomats and head of states among others, who are supposed to be enforcing human rights law and provide security to others, human trafficking becomes more difficult to combat. As a consequence, the international community has not only to fight against private traffickers but also against their own representatives. Peacekeeping operations have been created with the intention of relief the host society of the problems after a conflict. It should not be the case that during their stay peacekeeping missions generate other social sicknesses to combat such as sex trade.

The most concerning issue is that the people who represent the law or the image of the United Nations, an organization recognized worldwide as the guardian of Human Rights that should protect any person in any situation of vulnerability, are becoming the perpetrators in this organized crime. This aspect would put in question the credibility of international law in terms of protection and prosecution⁵⁶, and of many other institutions that day by day are actually working to create possible solutions to punish trafficking in people and for the same propose as the United Nations peacekeeping missions.

The lack of efforts and strategies from member states to prevent this behavior in their troops have created a chain of corruption and have already had a domino effect in other peacekeeping operations like in Haiti⁵⁷, Liberia⁵⁸ or in the Democratic Republic of Congo⁵⁹. The crimes of sexual exploitation and sex trade committed in Bosnia or Cambodia in the early nineties have now been reported in other countries where peacekeeping operations are present. Member States must take the responsibility of enforcing the laws and treaties that they have ratified by sending more prepared personnel that can cope better with possible gender problematics and can respond better to the temptation of getting engaged in illegal underground activities. Moreover, the noncompliance of the existent treaties to preserve human rights puts in danger the credibility that the United Nations is capable to translate these ratified documents by member states into real actions.

The tolerated impunity covered by the diplomatic immunity is a pull factor for peacekeepers to get involved in human trafficking. It also creates a notion in host countries of peacekeeping operations that law is beside the people who transgress it or have political influence and power, instead of the victims and the most vulnerable. If this perception is still being evident, the consequences would be the inefficient protection of victims and whistleblowers putting their lives in danger. The lack of protection and the involvement of officers they met in their

⁵⁶ Ibid. Page 18.

⁵⁷ Smith, C. A. and Smith, H. M. 2010. Human Trafficking: The Unintended Effects of United Nations Intervention. SAGE Journals, 20 p. 8. Available from: doi: 10.1177/0192512110371240.

⁵⁸ Kirby, K. M. 2011. Peacekeepers, the Military and Human Trafficking: Protecting Whom?. University of St. Thomas Law Journal, 6 (1). Page 231-236

⁵⁹ Hansen, A. S. 2002. From Congo to Kosovo. Oxford: Oxford University Press for the International Institute for Strategic Studies.

time of sexual slaves in the case of the victims or during their mission in the case of IPTF whistleblowers, are both push factors to be scared of retaliation that traffickers or peers could take against them. Without efficient protection, the victims and whistleblowers would not testify against the perpetrators and no case would be possible to present before military and international courts.

Efforts should be addressed to develop a better system of accountability. It is of utmost importance to know how many UN personnel are involved in the crime. This attempt has not the purpose of shaming anyone. Authorities cannot absolutely control the behavior of the whole mission but they can prevent abuses and combat them better when they are aware of the situation. To recognize the causes, implications and modus of crime does not mean that both, UN and member states, are not good enough to solve other problems related to peacekeeping operations or other complications that appear in the missions.

The most necessary measure to combat this crime is truly international cooperation and compromise, as the Jordanian Prince Zeid Ra'ad Zeid Al-Hussein's⁶⁰ has emphasized in recent years. After September 11 2001, many countries assumed the compromise to combat Terrorism. Member states initiated a war in Afghanistan and Iraq with very little proof that these countries were either protecting the terrorists or that the terrorist were living there. However, the international community gave a quick response and in less than one year they were initiating a war against them. Human Trafficking is transnational crime that has more than sufficient proof of its existence, its victims and its consequences after twenty years, but has had a much weaker and slower international response to be combated than Terrorism.

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⁶⁰ al-Hussein, Prince Zeid Ra'ad Zeid. (2005) A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations. Report to the UN Special Committee on Peacekeeping Operations (A/59/710).

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