

Is Everything Under Control? Strategic Invocation of Extraterritorial Human Rights Obligations of Troop Contributing Countries for Sexual Exploitation and Abuse by UN Peacekeepers

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Abstract: This article addresses an age-old haunt of UN peacekeeping missions which has largely been unmet by legal redress. In looking back, it highlights the prevalence of sexual exploitation and abuse (SEA) by UN peacekeepers, which has pervaded almost every mission since the end of the Cold War. In looking ahead, it analyses the reach and restraints of strategic litigation against troop contributing countries (TCCs) by invoking their extraterritorial human rights obligations (ETOs) under the established tests for ETOs in regional jurisprudence. It considers the challenges of trying to squeeze the factual nature of instances of SEA into the traditional tests for establishing ETOs, particularly in cases of transactional or survival sex. In light of those challenges, it argues for such tests to be viewed through a gender, child and rights-based lens by engaging with feminist and contextual considerations of the conflict-affected environments in which SEA thrives. Because transactional sex engages rights under the International Covenant on Economic, Social and Cultural Rights directly as basic rights (such as the rights to food and health) are made conditional on sex, this article will also outline that this Covenant may be relied upon as a complementary avenue to the former control-based approach in litigating SEA. This Covenant, along with the Convention on the Elimination of All Forms of Discrimination against Women and the African human rights instruments may provide a promising avenue to invoke ETOs of TCCs for SEA by peacekeepers as they do not contain a ‘jurisdiction’ clause limiting obligations to within a state’s own territory. As such, they do not appear to require exclusive reliance on the traditional tests for ETOs to be applied to extend those obligations abroad. This approach has been explored in detail by Professor Ralph Wilde. Where strict control over individual victims of SEA by UN peacekeepers might be difficult to establish given the varying modes in which SEA can occur, this complementary

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avenue may not require the satisfaction of the traditional power/control tests in the same manner and thus provides an increased likelihood for victims to obtain an effective remedy.

Keywords: *Extraterritorial; International Human Rights Law; Extraterritorial Human Rights Obligations; Troop Contributing Countries; Sexual Exploitation and Abuse*

Introduction

A 14 year old girl was walking by a base of United Nations (UN) peacekeepers at the airport in the Central African Republic (CAR), where she was dragged off the path and raped by UN peacekeepers.¹ A 29 year old woman was washing herself in her hut when a UN peacekeeper broke in and raped her: “I said, ‘What are you doing here?’ and I told him to leave. But he forced himself on me and as he was stronger I had no choice.”² An 18 year old woman, while visiting the base of Democratic Republic of Congo (DRC) troops to seek food or money, was forced into a bush where she was gang-raped by armed UN peacekeepers.³ In the months before, she had engaged in sex with UN peacekeepers at this base in exchange for food: “It was always after sex that they gave us things.”⁴

These cases exemplify the widespread sexual exploitation and abuse (SEA) by UN peacekeepers of local women and children. It is prevalent against boys as well as girls, and there is also some limited evidence of SEA against men by peacekeepers.⁵ SEA has arisen in almost all UN peacekeeping missions since the end of the Cold War.⁶

Instances of SEA range from violations of both the host state’s criminal law and widely recognised human rights if unchecked,⁷ to simply exploitative conduct if not specifically

¹ ‘Central African Republic: Rape by Peacekeepers UN, Troop-Contributing Countries Should Hold Abusers Accountable’ (*Human Rights Watch*, 4 February 2016) <www.hrw.org/news/2016/02/04/central-african-republic-rape-peacekeepers> accessed 2 June 2025.

² *ibid.*

³ *ibid.*

⁴ *ibid.*

⁵ Cassandra Mudgway, *Sexual Exploitation and Abuse by UN Peacekeepers: Towards a Hybrid Solution* (Routledge Research in Human Rights Law 2019) 9.

⁶ Jasmine-Kim Westendorf, *Violating Peace: Sex, Aid, and Peacekeeping* (Cornell University Press 2020) 1.

⁷ United Nations, *Policy on Integrating a Human Rights-Based Approach to United Nations Efforts to Prevent and Respond to Sexual Exploitation and Abuse* (UN 2021) <<https://www.un.org/preventing-sexual-exploitation-and-abuse/sites/www.un.org.preventing-sexual-exploitation->

regulated by law.⁸ Troop contributing countries (TCCs) directly employ peacekeepers and have sole criminal and disciplinary jurisdiction over misconduct on missions abroad.⁹ The legal basis for this is found in Status of Forces Agreements (SOFAs) and in Memoranda of Understanding (MOUs). While criminal investigations and prosecutions by the TCCs are necessary, they are insufficient alone: TCCs generally fail to report the outcomes of cases to the UN or the host state, which undermines the role of reporting as a deterrent when the offending conduct of SEA is exposed, and as a catalyst for change when it has been left unaddressed.¹⁰ A study in 2005 recommended that prosecutions be complemented by other measures, such as the provision of effective remedies.¹¹ Such remedies might include civil reparations or dedicated victim support mechanisms as non-adversarial forms of remedy for victims. They may also include judicial remedies through litigating against SEA by UN peacekeepers, in a criminal *or* human rights context. An independent panel to review SEA allegations has recommended treating SEA by UN peacekeepers as human rights violating conduct to be addressed within the UN framework; through both its SEA and human rights policy frameworks to ensure the UN and TCC have an obligation to respond to allegations of SEA in a meaningful way.¹²

For TCCs, this approach would have to be premised on an acceptance that they owe extraterritorial human rights obligations (ETOs) to victims of SEA when the perpetrators are UN peacekeepers abroad. The activities of any given state through their policies and practices have an impact on human rights within their own territory but also abroad where a sufficient level of control over individuals or territory is exercised by state agents, for instance, in cases of extraterritorial detention or foreign occupation.¹³ This requires state accountability for their actions abroad when human rights have been breached through their agents. Current literature identifies the invocation of ETOs of TCCs as a legal avenue for victims of SEA by UN peacekeepers to seek redress where other avenues are not feasible, such as the UN being

[andabuse/files/policy_on_integrating_a_human_rights-based_approach_to_un_efforts_to_prevent_and_respond_to_sea.pdf](#)> accessed 9 April 2026.

⁸ Westendorf (n 6) ch 1, 26, 28, 31, 32.

⁹ Rosa Freedman, 'UNaccountable: A New Approach to Peacekeepers and Sexual Abuse' (2018) 29 EJIL 968.

¹⁰ Sofia Sutera 'Sexual Exploitation and Abuse in Peacekeeping: Making Human Rights Obligations Universal', (2020) PHRG 4(2) 161, 178; Mudgway (n 5) 10.

¹¹ Sutera (n 10).

¹² *ibid*; UNGA, 'Report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic' (2016) UN Doc A/71/99.

¹³ Ralph Wilde, 'The Extraterritorial Application of International Human Rights Law on Civil and Political Rights' in Sheeran S and Rodley N (eds), *Routledge Handbook of International Human Rights Law* (Taylor & Francis 2013) ch 35.

immune from the jurisdiction of courts.¹⁴ However, such literature is limited to finding a general possibility of establishing ETOs for SEA.¹⁵ This literature does not delve into the practical reach or restraints of this approach if a claim is actually brought to the regional court or human rights body to whose jurisdiction a TCC is subject, particularly in relation to cases concerning transactional SEA, which may not itself be criminal. In such cases, establishing ‘control’ over a victim where they might have willingly engaged in sex in exchange for commodities is more difficult than in the factual scenarios that arise in the current ETO jurisprudence where control has been established for example over a person detained and tortured by foreign state agents. It is the non-criminal instances of SEA such as transactional sex which produce a grey area for ETO litigation to succeed based on the traditional ETO jurisprudence as it stands. In this article, I will show that there readily exists an avenue to work around that grey area if international human rights law (IHRL) is applied strategically.

This article will establish that, while the ETO route provides a possibility for victims to seek a remedy in IHRL, the likelihood of regional human rights courts recognising ETOs for SEA by applying the current tests for ETOs is uncertain and requires strategic litigation. A primary focus will be given to the ‘uncertain’ cases of non-criminal SEA, namely transactional and survival sex, in arguing that a broader reading of the current ETO tests should be taken if such a case were to be taken to a regional human rights court in light of feminist and contextual considerations. There will also be a focus on the extraterritorial invocation of economic, social and cultural (ESC) rights (which are arguably directly engaged by transactional sex) under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and under treaties without a ‘jurisdiction’ clause. Because obligations under such treaties are not expressly limited by a jurisdiction clause, the traditional control-based tests for ETOs under treaties that *do* contain such a clause may not be required in the same manner, therefore a broader approach to establishing ETOs that is more suited to the SEA context may be taken.¹⁶ Throughout the article, greater weight is given to the African system for two reasons: (1) African states

¹⁴ Róisín Burke, ‘Shaming the State: Sexual Offences by UN Military Peacekeepers and the Rhetoric of Zero Tolerance’ in Gina Heathcote (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave Macmillan, a division of Macmillan Publishers Limited 2014) 86.

¹⁵ Since roughly 2015, there has been ample jurisprudence on the application on ETOs from the European Court of Human Rights.

¹⁶ Wilde (n 13).

currently make up the majority of the top 20 TCCs,¹⁷ and (2) missions with the highest allegations of SEA in 2023 were based in the DRC and CAR.¹⁸

To establish this thesis, I will first outline the general legal framework governing UN peacekeeping, the types of SEA, and the treaties relevant to SEA before outlining the treaty ratification status of the top 20 TCCs and their corresponding obligations. This is a necessary step to identify which treaties the top TCCs are actually bound by for ETOs arising from those treaties to be established in the first place. Second, I will outline the extraterritorial applicability of the relevant treaties and attempt to reconcile the regional jurisprudence of Latin America, Europe and Africa on ETOs with potential SEA litigation in the UN peacekeeping context. Where such reconciliation presents uncertainties, I will argue first that using feminist, child-centric and rights-based arguments in the context in which SEA in peacekeeping occurs allows control over individuals in instances of SEA to be inferred. Second, I will outline that there is potentially a ready-made path to establishing ETOs for transactional sex under the ICESCR and similar treaties without a ‘jurisdiction’ clause to invoke ETOs. While current jurisprudence establishes ETOs based on control over individuals and/or over territory,¹⁹ and while various UN peacekeeping missions indeed exercise a level of governance over local populations which may well be argued to consist of control over territory,²⁰ in the interest of clarity and concision and given the varying and individualised manner in which SEA takes place, this article will primarily focus on control over individuals.

I. Definitions and Frameworks Governing UN Peacekeeping

A. Sexual Exploitation and Abuse

SEA encompasses related but distinct forms of conduct. The UN Zero Tolerance Policy (ZTP) of 2003 on SEA 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”, and the

¹⁷ United Nations Peacekeeping, Troop And Police Contributors <<https://peacekeeping.un.org/en/troop-and-police-contributors>> accessed 28 May 2025.

¹⁸ UN Affairs, ‘Sexual exploitation and abuse: UN intensifying efforts to uphold victims’ rights’ (*UN News*, 26 March 2024) <<https://news.un.org/en/story/2024/03/1148016>> accessed 9 June 2025.

¹⁹ Wilde (n 13).

²⁰ *ibid.*

term “sexual abuse” is defined as “the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”²¹ Crucially, this demonstrates that not all instances of SEA will activate the same obligations of TCCs (discussed in section II). This is because not all SEA is criminal in nature.²² For instance, rape is criminal, but sexual exploitation may not be (except when it involves minors), as it may involve agency and negotiation, blurring the issue of consent, albeit in circumstances of deprivation and insecurity.²³

Transactional sex encompasses the vast majority of allegations of SEA investigated by the UN, where sex is given in exchange for money, food, or jobs, and is not inherently criminal.²⁴ However, the majority of transactional sex reported in the literature relates to children, which is criminal.²⁵ Nonetheless, non-criminal instances of transactional sex (against adults) can amount to a rights violation, which is particularly clear in transactional cases of survival sex where sex is exchanged for aid or assistance (something already owed to the local population) to survive.²⁶ In relation to criminal instances of SEA other than SEA against children, there have been many documented instances of both opportunistic and planned rape by peacekeepers.²⁷ However, male victims of rape receive less recognition in law than female victims.²⁸ Due to the distinct forms SEA can take generally, distinct legal consequences arise in terms of obligations and in establishing a sufficient level of control over individuals to establish ETOs.

B. The Legal Framework

UN peacekeeping operations are deployed by mandate from the UN Security Council (UNSC), under its primary responsibility for the maintenance of international peace and security under

²¹ Secretary-General’s Bulletin, ‘Special measures for protection from sexual exploitation and sexual abuse, UN Secretariat’ (9 October 2003) UN Doc ST/SBG/2003/13 [1].

²² Jasmine-Kim Westendorf and Louise Searle, ‘Sexual exploitation and abuse in peace operations: trends, policy responses and future directions’ (2017) 93(2) *IA* 365, 368.

²³ *ibid* 371; Westendorf (n 6) ch 2, 37.

²⁴ Westendorf (n 6) ch 2, 32.

²⁵ *ibid* 34.

²⁶ Cassandra Mudgway, ‘Sexual exploitation by UN peacekeepers: the ‘survival sex’ gap in international human rights law’ (2017) 21 *IJHR* 1453, 1453.

²⁷ Westendorf (n 6) ch 2, 29.

²⁸ Lara Stemple, ‘Male Rape and Human Rights’ (2009) 60(3) *HLJ* 605, 610, 644.

the UN Charter.²⁹ UN peacekeeping operations are multidimensional: as well as being called upon for the maintenance of peace and security, they facilitate the political process, protect civilians and human rights, assist in the disarmament of former combatants and support the organisation of elections and the restoration of the rule of law.³⁰

IHRL forms an integral part of the normative framework for UN peacekeeping operations.³¹ The principles and guidelines for UN peacekeeping state that UN peacekeeping operations should be conducted in full respect of human rights and should seek to advance human rights through the implementation of their mandates.³² They further provide that most UN multi-dimensional peacekeeping operations are mandated to promote and protect human rights by monitoring and helping to investigate human rights violations and/or developing the capacity of national actors and institutions to do so on their own.³³

The MOUs are the bilateral agreements between the TCC and the UN that establish “the maintenance of discipline and good order among such personnel and the investigation of, and accountability for, violations”, vesting criminal and disciplinary jurisdiction over peacekeepers exclusively in the TCC.³⁴ They prohibit SEA, stating such acts “violate universally recognised international legal norms and standards.”³⁵ The MOUs refer to the code of personal conduct for peacekeepers, which prohibits “immoral acts of sexual, physical or psychological abuse or exploitation of the local population...especially women and children.”³⁶ Notably, the word “especially”³⁷ may indicate that this does not exclude men.

The legal relationship between the UN peacekeeping operation and the host state is governed by the bilateral SOFAs which also maintain that exclusive responsibility to discipline

²⁹ ‘Mandates and the Legal Basis for Peacekeeping’ (*United Nations Peacekeeping*) <<https://peacekeeping.un.org/en/mandates-and-legal-basis-peacekeeping>> accessed 9 June 2025.

³⁰ United Nations, ‘What is peacekeeping?’ <<https://peacekeeping.un.org/en/what-is-peacekeeping>> accessed on 17 May 2026.

³¹ Westendorf (n 6) 14.

³² *ibid.*

³³ *ibid* 27.

³⁴ UNGA ‘Revised draft model memorandum of understanding between the United Nations and [participating State] contributing resources to [the United Nations Peacekeeping Operation]’, (3 October 2006) UN Doc A/61/494 art 3 (‘MOU’).

³⁵ *ibid* Annex H.

³⁶ ‘Ten Rules: Code of Personal Conduct for Blue Helmets’ (*United Nations Police*, 1999) para 4. <<https://police.un.org/en/ten-rules-code-of-personal-conduct-blue-helmets-1999>> accessed on 9 June 2025.

³⁷ *ibid.*

and criminally sanction military contingents rests with TCCs.³⁸ This operates as an absolute immunity of the troops from the jurisdiction of the host state.³⁹

These instruments distinguish UN peacekeeping troops from ordinary military troops and explicitly lay out the precise responsibilities of TCCs in respect of the former, including the prohibition of SEA in peacekeeping. They create a distinct network of agreements between the UN, host states and TCCs. They provide that the TCC is obligated to investigate and prosecute crimes, with the UN being limited to administrative investigations if the TCC fails to undertake its own investigations within ten days of an allegation being made to its authorities.⁴⁰ In reality, the TCC and the UN frequently ignore these obligations.⁴¹ As a result, the UNSC Resolution 2272 requests that the UN Secretary General repatriate entire units if the TCC fails to prosecute alleged perpetrators of sexual misconduct within six months.⁴² In many instances, it is not apparent that even after repatriation, any action is taken by the TCC against the alleged perpetrators of SEA.⁴³

Indeed, even where specific conduct is not expressly covered by the MOUs and SOFAs, due diligence obligations of TCCs are still in force. The applicable human rights treaties give rise to general positive obligations of TCCs (subject to their ratification) to prevent and respond to human rights violations through SEA by its peacekeepers as state agents.⁴⁴ IHRL guarantees the special protection of women and children, who are disproportionately affected by SEA, in reading the International Covenant on Civil and Political Rights⁴⁵ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights⁴⁶ (ICESCR).⁴⁷ Broadly, these treaties also contain provisions which may be breached by SEA, such as freedom from discrimination, the right to life and private and family life (in ICCPR) and the rights to health

³⁸ REDRESS and CRIN, *Litigating Child Peacekeeper Sexual Abuse* (2020) 14

<<https://redress.org/wp-content/uploads/2020/01/LitigatingPeacekeeperChildSexualAbuseReport.pdf>> last accessed 9 June 2025; UNGA, 'Model status-of-forces agreement for peace-keeping operations' (9 October 1990) UN Doc A/45/594 ('SOFA').

³⁹ REDRESS and CRIN (n 38) 14.

⁴⁰ MOU (n 34); SOFA (n 38); Freedman (n 9).

⁴¹ Freedman (n 9).

⁴² UNSC Res 2272 (11 March 2016) UN Doc S/RES/2272.

⁴³ Róisín Burke, *Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility under International Law* (IHLS 42, Brill Nijhoff 2012) 8; See also: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee Against Torture) 'Concluding Observations: Sri Lanka' (25 November 2011) UN Doc CAT/C/LKA/CO/3-4 [23].

⁴⁴ Burke (n 43) 316.

⁴⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR').

⁴⁶ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 ('ICESCR').

⁴⁷ Sutera (n 10) 165.

and an adequate standard of living (including food, water and sanitation, in ICESCR).⁴⁸ The requirement to protect women and children from SEA is stipulated both directly and indirectly in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴⁹ and the Convention on the Rights of the Child (CRC).⁵⁰ It is important to note that there are no equivalent specialised treaty protections for male victims of SEA comparable to those provided for women and children under CEDAW and the CRC,⁵¹ but the relevant rights under the ICCPR and ICESCR apply to men as well. In cases of transactional or survival sex, the ICESCR rights are arguably in breach where such rights are made conditional on sex (discussed further in section II), with such rights complementing the right to life by recognising the socio-economic conditions necessary to live a life in dignity.⁵²

The rights relevant to SEA enshrined in these treaties are reflected in substance in the African Charter on Human and Peoples Rights (African Charter),⁵³ the American Convention on Human Rights (ACHR),⁵⁴ and the European Convention on Human Rights (ECHR)⁵⁵ with variations. In the African system, the African Charter builds upon the International Bill of Rights.⁵⁶ It encompasses both civil and political and ESC rights.⁵⁷ Two African counterparts to the CRC and CEDAW are the African Charter on the Rights and Welfare of the Child (ACRWC), including an explicit provision on the protection of children from SEA, and the Maputo Protocol.⁵⁸ This reinforces the importance of protecting women and children from abuse in the African system, and provides a strong basis for SEA litigation there. The ECHR is

⁴⁸ United Nations (n 7) para 10; ICCPR arts 6, 17 ; ICESCR arts 11, 12.

⁴⁹ Convention on the Elimination of All Forms of Discrimination against Women, New York (adopted 18 December 1979) 1249 UNTS 13 ('CEDAW').

⁵⁰ Convention on the Rights of the Child (adopted 20 November 1989) UNGA Res 44/25 ('CRC').

⁵¹ Stemple (n 28) 618.

⁵² Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (2nd edn, OUP 2019) ch 9, pt III.

⁵³ African Charter on Human and Peoples' Rights, Nairobi, (adopted 27 June 1981, entered into force 21 October 1986) ('African Charter').

⁵⁴ American Convention on Human Rights, San Jose (adopted 22 November 1969, entered into force 18 July 1978), 1144 UNTS 123 ('ACHR').

⁵⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ('ECHR').

⁵⁶ African Charter (n 53); Başak Çalı, 'Regional Protection' in Daniel Moeckli and others (eds), *International Human Rights Law* (OUP 2022) 433; Başak Çalı, 'Regional Protection' in Daniel Moeckli and others (eds), *International Human Rights Law* (OUP 2022) Thomas M Antkowiak 'The Americas' in Daniel Moeckli and others (eds), *International Human Rights Law* (OUP 2022) 447.

⁵⁷ *ibid.*

⁵⁸ African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (1990) ('ACRWC') art 27; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) ('Maputo Protocol').

limited to the protection of civil and political rights.⁵⁹ Both the Inter-American and European system have counterparts to the CEDAW: the American Convention of Belém do Pará⁶⁰ and the European Istanbul Convention.⁶¹ Therefore, there is a wide set of treaties which SEA may breach both internationally and regionally.

Moreover, these treaties are widely ratified by the top 20 TCCs. The top 20 TCCs are, in the following order: Nepal, Rwanda, Bangladesh, India, Indonesia, Ghana, Pakistan, China, Morocco, the United Republic of Tanzania, Ethiopia, Senegal, Egypt, South Africa, Cameroon, Zambia, Italy, Tunisia, Uruguay and Mongolia.⁶² Each of these countries also operate a separate military justice system to try crimes committed by its military, including troops contributed to peacekeeping missions.⁶³ The IHRL obligations of the top 20 TCCs arise from their treaty ratification status. All top TCCs are legally bound by the ICCPR except China, and all have accepted its individual complaints procedure except Rwanda, Bangladesh, India, Indonesia, Pakistan, China, the United Republic of Tanzania, Ethiopia, and Egypt.⁶⁴ All top 20 TCCs are legally bound by the ICESCR.⁶⁵ All TCCs are legally bound by CEDAW, and all except for India, Indonesia, Pakistan, China, Ethiopia, Egypt, and Zambia have accepted its individual complaints procedure.⁶⁶ All top TCCs are legally bound by the CRC.⁶⁷ The African TCCs are bound by the African Charter, save for Morocco; Italy is bound by the ECHR; and Uruguay by the ACHR.⁶⁸ All top TCCs, save for Morocco, are subject to the jurisdiction of their respective

⁵⁹ Çalı (n 56) 432.

⁶⁰ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) ('Convention of Belém do Pará').

⁶¹ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS No 210 ('Istanbul Convention').

⁶² United Nations Peacekeeping (n 17).

⁶³ Sutera (n 10) 171-174.

⁶⁴ UN Treaty Body Database, Ratification Status for CCPR - International Covenant on Civil and Political Rights <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en> accessed 9 June 2025.

⁶⁵ UN Treaty Body Database, Ratification Status for CESC - International Covenant on Economic, Social and Cultural Rights <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CESCR&Lang=en> accessed 8 July 2026..

⁶⁶ UN Treaty Body Database, Ratification Status for CEDAW - Convention on the Elimination of All Forms of Discrimination against Women <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en> accessed 8 July 2026..

⁶⁷ UN Treaty Body Database, Ratification Status for CRC - Convention on the Rights of the Child <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en> accessed 8 July 2026..

⁶⁸ African Union, African Charter on Human and Peoples' Rights <<https://au.int/en/treaties/african-charter-human-and-peoples-rights>> accessed 8 July 2026; Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005>> accessed 8 July 2026; Organization of American States, American Convention on

regional human rights court. This is to the exclusion of the other TCCs not subject to any regional human rights court, and thus they can only be considered in relation to the complaints mechanisms they are subject to.

In the context of SEA, prospective obligations to prevent violations provide that all states must exercise due diligence to protect persons from acts of SEA that amount to sexual violence.⁶⁹ This may include criminalisation of all forms of sexual violence, establishing effective mechanisms for investigating and prosecuting, ensuring the penalties against those found responsible reflect the gravity of the offence, and providing reparations for victims.⁷⁰ It is recommended that states extend their jurisdiction to acts of sexual violence committed by their nationals abroad.⁷¹ This is supported by the CEDAW Committee and the CRC.⁷² When violations of human rights arise from SEA by peacekeepers, TCCs are required to fulfil their retroactive obligations to investigate and, where necessary, prosecute their nationals accused of SEA in its criminal form abroad where states have extraterritorial jurisdiction.⁷³ This is also supported by the CEDAW Committee and the CRC.⁷⁴ The ICCPR at Article 2(3) requires states to provide an effective remedy for rights violations and to ensure that individuals have their complaints properly determined by competent judicial authorities.⁷⁵

In general, the obligations on states arising from these treaties are tripartite: to *respect*, which involves negative or preventive obligations to prohibit rights breaching conduct; and to *protect* and *fulfil*, which are positive obligations to adopt measures to protect from rights breaching conduct and to take steps to control threats of these breaches to fulfil such obligations.⁷⁶ For instance, under the ICESCR, greater weight is placed on fulfilment components and the progressive realisation of rights due to resource limitations to fulfil the right to food and water.⁷⁷ Conventions such as the ICCPR and CEDAW provide for ‘instant realisation’ and the obligation to respect rights therein have immediate effect.⁷⁸ Article 2 of the

Human Rights “Pact Of San Jose, Costa Rica” <https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.htm> accessed 8 July 2026.

⁶⁹ United Nations (n 7) para 6.

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² CEDAW, ‘General recommendation No.19 on Violence against women’ (1992) A/47/38, para 9; CRC (n 50) arts 34, 19(1), 19(2).

⁷³ United Nations (n 7) para 4.

⁷⁴ CEDAW); CRC arts 19(1), 19(2).

⁷⁵ ICCPR.

⁷⁶ Kälin and Künzli (n 52) chs 1–5.

⁷⁷ *ibid* ch 3, pt III, s 6.

⁷⁸ HRC GC No. 31 ‘The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) CCPR/C/21/Rev.1/Add. 13 para 5.

CEDAW provides that “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” The CEDAW Committee states that States may also be responsible under general international law and specific human rights covenants for private acts if they fail to act with due diligence to prevent violations of rights.⁷⁹ Under Article 34 of the CRC, State Parties must take all appropriate national, bilateral, and multilateral measures to prevent inducing or coercing children to engage in any unlawful sexual activity.⁸⁰

Given the disciplinary authority and criminal jurisdiction retained by the TCCs over their peacekeeping troops, state responsibility may arise for their acts or omissions in relation to SEA committed during peacekeeping missions. TCC responsibility is most likely to arise through omission, such as the failure to exercise due diligence to prevent SEA at the outset, failure to investigate and, where necessary, prosecute, rather than for the act of SEA itself.⁸¹ Importantly, establishing human rights obligations of TCCs extraterritorially is distinct from the question of state responsibility where questions of attribution arise – that is, where a peacekeeper or peacekeeping troop is acting as an organ of the state, and thus the wrongful conduct is considered an act of the state.⁸² The invocation of ETOs of TCCs is distinct, and the key question is whether the TCC had sufficient authority, power or control over a victim through its agents to bring them within their extraterritorial jurisdiction and trigger its human rights obligations abroad. Even if the actions of UN peacekeeping troops are attributable to the TCC under the law of state responsibility, a claim under a regional human rights treaty may still fail unless the victim can be shown to fall within the TCC’s extraterritorial jurisdiction through which rights obligations are owed to them.

What of the traction of these obligations in the extraterritorial context? Section II discusses the extraterritorial application of these treaties before analysing whether the varying modes of SEA fit or can be interpreted as fitting into the established tests for ETOs.

II. Invoking ETOs of TCCs for SEA by UN Peacekeepers

⁷⁹ CEDAW, ‘General recommendation No.19 on Violence against women’ (1992) A/47/38, para 9.

⁸⁰ CRC art 34.

⁸¹ Burke (n 14) 86.

⁸² See Responsibility of States for Internationally Wrongful Acts (2001) (ARSIWA); James Crawford and Simon Olleson, ‘The Character and Forms of International Responsibility’ in Malcolm Evans (ed), *International Law* (5th edn, OUP 2018) ch 14.

This section begins by outlining the extraterritorial applicability of the relevant treaties and the jurisprudence of the Human Rights Committee and CEDAW Committee on ETOs. These Committees make up a body of independent experts to monitor the implementation of the ICCPR and CEDAW by state parties. It then assesses African jurisprudence to evaluate its potential position on SEA-related ETOs under the African Charter. Given its limited case law, the Inter-American and European jurisprudence are also examined. As the European Court of Human Rights (ECtHR) has the most extensive ETO jurisprudence, the African and Inter-American systems often follow its approach.⁸³

A. ‘Jurisdiction’ Clauses and the Jurisdictional Extent of Obligations

The table below seeks to concisely encapsulate the complexity of the jurisdictional extent of the relevant IHRL treaties.

Table Figure 1: Scope of Jurisdiction in Relevant IHRL Treaties

Treaty	Jurisdiction Clause	Interpretation
ICCPR	Art 2(1): “within its territory and subject to its jurisdiction”	Interpreted to apply extraterritorially by power or effective control over individuals. ⁸⁴
CRC	Art 2(1): “within their jurisdiction”	International Court of Justice (ICJ) has interpreted as operating by control over territory in the occupation context. ⁸⁵
ECHR	Art 1: “within their jurisdiction”	Interpreted to apply extraterritorially by control over territory and individuals. ⁸⁶

⁸³ *Mohamed Abdullah Saleh Al-Asad v Djibouti* (2015) Communication No 383/10, ACmHPR; REDRESS and CRIN (n 38) 74.

⁸⁴ HRC GC No. 31 (n 79) para 10.

⁸⁵ Ralph Wilde, ‘Triggering State Obligations Extraterritorially: The Spatial Test in Certain Human Rights Treaties’ (2007) 40 ICLQ 503, 508.

⁸⁶ Case law explored below.

ACHR	Art 1(1): “subject to their jurisdiction”	Interpreted to apply extraterritorially by control over territory and individuals. ⁸⁷
ICESCR	No clause	Interpreted as applying extraterritorially. ⁸⁸
CEDAW	No clause	ICJ has interpreted it as if it contains jurisdiction clause. ⁸⁹ CEDAW Committee interpreted as applying to those under effective control even if outside the territory of the state party and in situations of extraterritorial administration or occupation. ⁹⁰
African Charter	No clause	Operates by control over territory and individuals. ⁹¹
ACRWC	No clause	ACRWC Committee appears to envisage that it operates by control over territory. ⁹²
Maputo Protocol	No clause	Not yet interpreted.

As shown in this table, most treaties have been interpreted as having the capacity to apply extraterritorially, even for those with a “jurisdiction” clause, which generally presumes territoriality in the sense that the treaty will generally be assumed to apply only to acts or omissions within the state.⁹³ For a human rights claim to be made against the TCC, it must be established that the omissions of that state are within the jurisdictional limits stipulated by the relevant treaty.⁹⁴ This jurisdiction will need to be extraterritorial, or interpreted in this way, given that the victims of SEA by peacekeepers are located outside the territory of the TCC.⁹⁵

⁸⁷ *Coard et al v United States* (1999) Case 10.951, Report No 109/99; *Brothers to the Rescue (Alejandre et al v Cuba)* (1999) Case 11.589, Report No 86/99, IACmHR.

⁸⁸ Ralph Wilde, ‘Pursuing Global Socio-Economic, Colonial and Environmental Justice through Economic Redistribution: The Potential Significance of Human Rights Treaty Obligations’ in Christina Binder and others (eds), *Research Handbook on International Law and Social Rights* (Edward Elgar 2020) ch 4, 74.

⁸⁹ Ralph Wilde, ‘The Extraterritorial Application of International Human Rights Law on Civil and Political Rights’ in Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Taylor & Francis 2013) ch 35, 635, 637, 639.

⁹⁰ CEDAW General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (18 October 2013) CEDAW/C/GC/30 paras 8-10.

⁹¹ *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2003) Communication No 227/99, ACmHPR; *Al-Asad* (n 84).

⁹² Anne Oloo and Wouter Vandenhole, ‘Enforcement of extraterritorial human rights obligations in the African human rights system’ in Mark Gibney and others (eds), *The Routledge Handbook on Extraterritorial Human Rights Obligations* (Taylor & Francis Group 2021) ch 10, 144.

⁹³ Wilde (n 90) ch 35, 635.

⁹⁴ REDRESS and CRIN (n 38) 73.

⁹⁵ *ibid.*

This can be done by establishing state control over individuals, or by a broader interpretation of treaties without a jurisdiction clause, explored in section II part (C).

As previously stated, the primary focus of this analysis of the jurisprudence will fall under the individual control model rather than the territorial control model (also referred to as the spatial model) of extraterritorial jurisdiction for concision and as SEA cases against individuals map on to the individual model more clearly. This is not to say that peacekeeping forces do not exercise public powers on territory which can lead to territorial control and arguments for ETOs under the territorial model may indeed be plausible.⁹⁶ The individual control model triggers extraterritorial jurisdiction in scenarios where the state or its agents exercise control, power or authority over individuals, for example in a detention setting.⁹⁷ The territorial model conceives obligations as flowing from effective or effective overall control over territory more broadly.⁹⁸ This binary is more distinctively an ECtHR based framework that is not uniformly replicated across other systems; for example, the Human Rights Committee adopts a “power or effective control” formulation which does not neatly map on to such a distinction, and it has also been described as adopting a ‘cause and effect’ model.⁹⁹ Nonetheless, cases involving control over individuals will be prioritised in this analysis, which will apply the jurisprudence to cases of SEA perpetrated against individuals where troops are sent to protect people extraterritorially.¹⁰⁰

The individual control test depends on the level of control over individuals, which encompasses a personal or state-agent-authority connection.¹⁰¹ This connection has been understood as control, power or authority.¹⁰² In cases of SEA by peacekeepers deployed abroad, ETOs of a TCC will be triggered where the TCC acting through its peacekeepers exercises a sufficient level of control, power or authority over the victim.¹⁰³ However, most regional jurisprudence on individual control relates to detention, targeted killings and shooting which

⁹⁶ For instance, see CEDAW Committee (n 91) para 9.

⁹⁷ Wilde (n 90) ch 35, 644.

⁹⁸ *ibid* 641-644; see *Loizidou v Turkey* (Preliminary Objections) App No 15318/89 (ECtHR, 23 March 1995), *Cyprus v Turkey* App No 25781/94 (ECtHR, 10 May 2001), *Bankovic v Belgium* (Admissibility) App No 52207/99 (ECtHR, 12 December 2001), and *Al-Skeini v United Kingdom* App No 55721/07 (ECtHR, 7 July 2011), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgment) [2005] ICJ Rep 168.

⁹⁹ HRC GC No. 31 (n 79) para 10; see also Oloo and Vandenhoe (n 93) in respect of the Human Rights Committee and inter-American monitoring bodies applying the cause and effect model at 145.

¹⁰⁰ Siobhán Wills, *Protecting Civilians: The Obligations of Peacekeepers* (OUP 2009) 20.

¹⁰¹ Wilde (n 90) 644.

¹⁰² *ibid*.

¹⁰³ *ibid*.

does not directly correlate to SEA.¹⁰⁴ A broader feminist, child-centric and rights-based argument is thus required to extend the control test to encompass SEA in peacekeeping. This approach presents a combination of both a normative claim about how courts should interpret the test for establishing ETOs in such circumstances, as well as an interpretive argument drawing on existing law. The control test as it exists and is applied may well apply to SEA in peacekeeping, only if it takes account of the nuances inherent in such conduct, which requires feminist, child and rights-based considerations. This can firstly be supported by the positions of the ICCPR and CEDAW Committees on control relevant to UN peacekeeping. Where cases of SEA do not neatly fit within the established tests as currently applied, there is a complementary route by way of the free-standing nature of treaties without a jurisdiction clause, such as the ICESCR, discussed below.

(i) *The Jurisprudence of the Human Rights Committee and CEDAW Committee*

The Human Rights Committee has stipulated that states have the obligation to ensure the rights of individuals “within the power or effective control of that State Party” abroad, “regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to a national peacekeeping or peace enforcement operation.”¹⁰⁵ The Human Rights Committee has also elaborated on the obligations of Belgium in relation to the sexual abuse of a Somali girl by Belgian peacekeepers.¹⁰⁶ On the basis of “power or effective control” over individuals, it stated that State Parties should respect the covenant when they exercise jurisdiction abroad, “as for example in the case of peacekeeping missions.”¹⁰⁷ This strongly suggests the application of extraterritorial jurisdiction in a way applicable to SEA in peacekeeping, where victims fall under the power or control of peacekeepers. This is in line with ICCPR General Comment No. 31, which states that the ICCPR applies “to those within the power or effective control of the forces of a State Party acting outside its territory...such as forces...assigned to an international

¹⁰⁴ *Coard* (n 88); *Isaak v Turkey* App. No. 44587/98, 28 Sept 2006, Admissibility; *Al-Skeini and Others v United Kingdom* App No 55721/07 (ECtHR, 7 July 2011); *Brothers to the Rescue (Alejandre et al v Cuba)* (1999) Case 11.589, Report No 86/99, IACmHR; *Al-Asad* (n 84).

¹⁰⁵ HRC GC No. 31 (n 79) para 10.

¹⁰⁶ Human Rights Committee, Concluding Observations: Belgium, UN Doc CCPR/CO/81/BEL (12 August 2004), para 6.

¹⁰⁷ *ibid.*

peace-keeping or peace-enforcement operation.”¹⁰⁸ However, it is notable that the case against the Somali girl involved sexual abuse against her as a minor. SEA in peacekeeping entails a broad range of conduct, including conduct that may not be criminal or involve the same level of control that might be exercised over a minor. Therefore, this case and the statements of the Human Rights Committee in relation to it may be limited in so far as they apply to the existence of ETOs in one specific context in which SEA arises in peacekeeping missions, that is, the sexual abuse of children. Despite that, the Human Rights Committee did seem to go further than that in its general statement that state parties should respect the Covenant when exercising their jurisdiction abroad in peacekeeping missions.

The CEDAW Committee has reiterated the applicability of ETOs in peacekeeping so as to encompass SEA in a broader fashion. In General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, the CEDAW Committee reiterated that obligations of state parties also apply extraterritorially to persons within their effective control and that states are responsible for all their actions which affect human rights.¹⁰⁹ It further stressed that state parties are bound to apply the CEDAW and other international human rights and humanitarian law while exercising “territorial or extraterritorial jurisdiction, whether individually, for example in unilateral military action, or as members of international or intergovernmental organizations and coalitions, for example as part of an international peacekeeping force.”¹¹⁰ It further stated that the Convention applies wherever a state exercises jurisdiction, including foreign territory administration (such as UN territorial administration), and national contingents in peacekeeping operations. The application of both the individual and territorial model is apparent here. The positions of both ICCPR and CEDAW provide a normative basis for extending ETOs in peacekeeping where effective control is exercised over individuals, and also under the territorial model. This may also influence regional legal systems’ approaches in proceedings involving SEA.

(ii) *African Jurisprudence*

¹⁰⁸ HRC GC No. 31 (n 79) para 10.

¹⁰⁹ CEDAW Committee (n 91) paras 3, 8.

¹¹⁰ *ibid* para 9.

The African Commission on Human and Peoples' Rights (ACmHPR) and African Court on Human and Peoples' Rights (ACtHPR) are the default bodies at the regional level in Africa in which to have SEA cases relating to African TCCs adjudicated provided the TCCsin question have accepted the jurisdiction of the ACtHPR. Implementation of the African Charter is monitored by the ACmHPR and the ACtHPR.¹¹¹ The literature on extraterritorial jurisdiction in the African system has not yet reached consensus, with some arguing for a territorial approach, and others to follow the approach of the ECtHR, partly because neither the ACHPR nor the ACRWC contain a reference to 'jurisdiction' (discussed further later).¹¹² As for the ACtHPR, it has only adjudicated on territorial jurisdiction to date.¹¹³

The Committee to the ACRWC has argued that African states have ETOs which extend to civil and political and ESC rights.¹¹⁴ This suggests an openness of the Committee to extend the scope of this Convention abroad, but it does not yet appear to engage directly with the individual model.

The ACmHPR has recognised the extraterritorial jurisdiction of states under the individual and territorial models.¹¹⁵ In the *Burundi Embargo* case, although the ACmHPR absolved the various African states of wrongdoing for imposition of economic sanctions, it acknowledged its future preparedness to find states responsible for violations of the rights of residents of foreign states.¹¹⁶ This highlights the ACmHPR's willingness to extend ETOs in relation to individuals.¹¹⁷ The absence of application the effective control test in this case may signal that the ACmHPR may accept that states have jurisdiction "whenever their actions have the effect of jeopardising human rights in the third states."¹¹⁸ Moreover, African states have tended not to argue against extraterritorial application of the African Charter, suggesting their acceptance to the imposition of ETOs.¹¹⁹ This is positive for the prospect of extraterritorial litigation on ETOs for SEA by peacekeepers at the ACmHPR.

¹¹¹ Oloo and Vandenhoe (n 93) 140.

¹¹² *ibid* 141.

¹¹³ *ibid* 144.

¹¹⁴ *ibid* 147.

¹¹⁵ *ibid* 142.

¹¹⁶ Sarah Joseph and Barrie Sander, 'Scope of Application' in Daniel Moeckli and others (eds), *International Human Rights Law* (OUP 2022) 121; *Burundi Embargo Case* (n 92).

¹¹⁷ *ibid* 121.

¹¹⁸ *ibid*.

¹¹⁹ Oloo and Vandenhoe (n 93) 143; *DRC invasion case* (n 99); *Union Interafricaine des Droits de l'Homme and Others v Angola* (1997) Communication No 159/96, African Commission on Human and Peoples' Rights.

The ACmHPR aligned with the approach of the ECtHR in *Al-Asad*.¹²⁰ To assume ETOs, it stated there must be a sufficient connection between the alleged violation and the respondent state, proven by the individual being under the effective control or authority of that state at the time of the alleged violation.¹²¹ The ACmHPR referenced ECtHR decisions adopting the same meaning of effective control.¹²² This case involved detention of the complainant and the question of control in the context of detention, however it was held to be inadmissible as the individual had failed to demonstrate that he was under the territorial jurisdiction or indeed effective control or authority of the Republic of Djibouti.¹²³ This approach appears to be narrower than that adopted in the *Burundi Embargo* case, but nonetheless, given its limited jurisprudence, the future development of the ETO jurisprudence in the African system is left open; a positive prospect for the strategic invocation of ETOs of TCCs.

(iii) *Inter-American Jurisprudence*

The Inter-American Commission on Human Rights (IACmHR) has relied upon the threshold of effective control over a person in its case law on ETOs towards individuals.¹²⁴ In *Coard*,¹²⁵ (though relating to the American Declaration of Human Rights) the IACmHR focused on whether the state observed the rights of a person subject to its authority and control in a detention context.¹²⁶ In *Alejandre v Cuba*, the IACmHR found jurisdiction over four deceased passengers of unarmed civilian airplanes shot down in international airspace.¹²⁷ The only basis for jurisdiction was in “the relationship between the agents of Cuba and the victims in the circumstances at the time of the incident.”¹²⁸ The relationship between UN peacekeepers as agents of the TCC and the victims in the host state is arguably closer than that in *Alejandre*, which culminated out of a singular act that killed.¹²⁹ In SEA, while not an immediate instance of control as in the context of shooting, the relationship between peacekeepers and victims can

¹²⁰ *Al-Asad* (n 84) at para 134.

¹²¹ *ibid* paras 125, 134, 136.

¹²² *Oloo and Vandenhole* (n 93) 145.

¹²³ *ibid* 145, 146.

¹²⁴ *Joseph and Sander* (n 117) 119.

¹²⁵ *Coard* (n 88).

¹²⁶ *Joseph and Sander* (n 117) 119.

¹²⁷ *ibid* 120.

¹²⁸ *ibid*.

¹²⁹ *ibid*.

be ongoing, as transactional sex may create a situation of dependency whereby those exploited seek out further transactional encounters.¹³⁰

The IACtHR has clarified the scope of extraterritorial jurisdiction under the ACHR, stating that the word “jurisdiction” in Article 1(1) ACHR provides that the state’s obligation to respect and ensure human rights apply to every person “in any way subject to its authority, responsibility or control”.¹³¹ Arguably, peacekeepers are responsible for the safety of civilians of host states in peacekeeping operations to the extent that they are “sent to protect” them.¹³²

Indeed, two recent Advisory Opinions of the IACtHR suggest that the Court is moving away from just a territorial/personal model binary to include jurisdiction over activities with extraterritorial effects in the context of climate change, indicating its openness to broadening the modes in which extraterritorial human rights obligations generally apply.¹³³

(iv) *European Jurisprudence*

It is significant to note the peacekeeping-related case of *Behrami/Saramati*, where the ECtHR avoided ruling on ETOs of TCCs to instead focus on attribution of conduct.¹³⁴ It held that the UN had ultimate authority and control over the peacekeeping forces, thereby attributing the impugned conduct to the UN.¹³⁵ While the focus here is on ETOs, not the responsibility of international organisations, this case is relevant in so far as it signals a risk that the ECtHR may avoid addressing TCC ETOs in a peacekeeping-related case. However, this risk may be rebutted in relation to SEA. These cases involved actions and omissions over conduct mandated by UNSC Resolution 1244.¹³⁶ The court held the impugned conduct to be attributable to the UN, not the TCCs, and thus, this fell outside the ECHR system. It held that it could not judge

¹³⁰ Westendorf (n 6) ch 1, 35, 36.

¹³¹ Joseph and Sander (n 117) 120.

¹³² Siobhán Wills, *Protecting Civilians: The Obligations of Peacekeepers* (OUP 2009) 20.

¹³³ See IACtHR, Advisory Opinion AO-32/25 on the Climate Emergency and Human Rights, 29th May 2025; and IACtHR, Advisory Opinion OC-23/17 on the Environment and Human Rights, 15th November 2017.

¹³⁴ Marko Milanovic and Tatjana Papic, ‘As Bad as It Gets: The European Court of Human Rights’s *Behrami* and *Saramati* Decision and General International Law’ (2008) 58 ICLQ 1, 1.

¹³⁵ *Behrami and Behrami v. France, Saramati v. France, Germany and Norway*, App Nos 71412/01 and 78166/01 (GC, 2 May 2007).

¹³⁶ *ibid.*

the actions or failures of states following a UNSC resolution.¹³⁷ However, SEA falls outside the UNSC peacekeeping mandate.¹³⁸ A TCC is endowed with the competencies relevant to preventing *ultra vires* abuses, like SEA.¹³⁹ It has long been accepted between the UN and TCCs that the responsibility to exercise criminal and disciplinary jurisdiction over SEA rests with the TCC, not the UN.¹⁴⁰ For these reasons, the reasoning of the court in *Behrami/Saramati* is distinguishable on the facts, and has in any event been substantially qualified by the case of *Al-Jedda*, where the ECtHR found the detention remained attributable to the UK despite the UNSC framework in operation.¹⁴¹

The individual model of extraterritorial jurisdiction was developed in the case of *Al-Skeini v UK*, concerning the deaths of six Iraqi civilians by British troops in Iraq, where five were shot and one detained.¹⁴² The court held that where a state exercises control and authority over an individual through its agents, it is obligated to secure the rights and freedoms “relevant to the situation of that individual”, implying circumstantial flexibility.¹⁴³ It developed a hybrid jurisdictional test, one step of which is relevant to the individual control model: through the use of force by a state’s agents against a person over whom the state is exercising “physical power and control”.¹⁴⁴ This test is arguably broad enough to encompass control in SEA, particularly in criminal instances where physical power is exercised over individuals to the extent that they cannot escape.

In *Isaak v Turkey*, the individual model was still applied even though the victims were not under the direct control of Turkey.¹⁴⁵ The ECtHR recognised that state-agent-authority can arise even without direct custody or arrest, and can be isolated and specific with proximity, rather than large-scale armed operations.¹⁴⁶ This case is highly relevant to SEA as it involved lethal physical violence by public agents leading to death, and “being surrounded by at least ten persons, he could hardly have escaped the control of the security forces.”¹⁴⁷ This strongly

¹³⁷ *ibid.*

¹³⁸ SC Res 1244 (10 June 1999) S/RES/1244.

¹³⁹ Tom Dannenbaum, ‘Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers’ (2010) 51 HILJ 1 114, 158.

¹⁴⁰ MOU (n 34), SOFA (n 38).

¹⁴¹ *Al-Jedda v The United Kingdom*, App No 27021/08 (ECtHR, 7 July 2011) [86].

¹⁴² *Al-Skeini v United Kingdom* (n 105).

¹⁴³ *ibid* para 137.

¹⁴⁴ *ibid* para 136.

¹⁴⁵ Kamran Khalilov, ‘Extraterritorial Jurisdiction of the ECHR in the Context of Analysis of Relevant Cases: Which Model Is Effective?’ (2021) 10 BSULR 83, 104.

¹⁴⁶ *Isaak* (n 105).

¹⁴⁷ *ibid* para 115.

relates to SEA, particularly where there are several perpetrators and the victim cannot escape, or escaping might entail a risk to life. An example of this is starkly reflected by one victim recalling her abuse: “[T]here were three of them on me. They were armed. They said if I resisted they would kill me.”¹⁴⁸

In sum, the main approaches to individual control under these cases most relevant to SEA cases are, broadly, physical power and effective control over individuals (for ease, hereafter referred to as the power/control test).¹⁴⁹

B. Reconciling Established Tests for ETOs with Control in SEA: The Issue of Transactional Sex

A key question for analysis is whether SEA can meet the control tests established in situations of detention, shooting, or targeted physical violence. Such a specific factual analysis on SEA has not yet been addressed in current literature in a sustained way. This section establishes the challenges of applying the power/control test in its current forms to SEA, and that some types of SEA will be less likely to meet the test than others.

Criminal cases of SEA meet the power/control test quite convincingly. In criminal instances of “sexual abuse”, the circumstances are similar to the physical use of force identified in *Isaak*, where the individual has no real means to escape.¹⁵⁰ For example, in Haiti, a girl was raped by a peacekeeper when she was 14: “[H]e held me down by the arms and held both my wrists, twisting them back, and we struggled together. And then he raped me.”¹⁵¹ In CAR, an 18-year-old woman and a 14-year-old girl were dragged into a bush and gang-raped by armed peacekeepers.¹⁵² The woman had been seeking food and/or money and was threatened with death if she resisted, and the girl was merely walking by.¹⁵³ These instances plainly demonstrate a significant level of physical power and control that prevent escape, like in detention settings and in cases such as *Isaak*. Moreover, all SEA against children (individuals under 18 years of

¹⁴⁸ Human Rights Watch (n 1).

¹⁴⁹ HRC GC No. 31 (n 79) para 8; CEDAW (n 72) paras 3, 8.

¹⁵⁰ *Isaak* (n 105) para 115.

¹⁵¹ Westendorf (n 6) ch 1, 29.

¹⁵² *ibid.*

¹⁵³ *ibid.*

age) is criminal, and the power/control test in any case against children can easily be met given their particular vulnerability.¹⁵⁴

In relation to criminal SEA against men, there is little to no factual evidence of how power/control might play out. Courts may indeed be less readily persuaded by arguments establishing power/control against men than in cases involving women and children, notwithstanding the obvious power imbalance between armed peacekeepers and unarmed civilians.

As previously discussed, transactional sex as a form of sexual exploitation is an empirical preponderance of cases of SEA by peacekeepers.¹⁵⁵ Meeting the general jurisprudential threshold of the power/control test is less likely here, as victims may willingly decide to engage in sex in exchange for money or other aid.¹⁵⁶ This challenges the general factual circumstances of the inability to escape, as in situations of detention and physical beating. However, this supposed unlikelihood arguably also accounts for a feminist approach, as feminists critique the blanket prohibition of transactional sex in the ZTP as disregarding that in certain countries where peacekeepers are deployed, transactional sex is culturally acceptable.¹⁵⁷ They critique that it disregards sex work, relationships and the motivations to engage in transactional sex, which can include love or excitement,¹⁵⁸ blurring the existence of a lack of meaningful choice inherent in exploitation, and thus countering any argument that this involves sufficient control over individuals. Nonetheless, there may be differing degrees of agency and consent resulting in a grey area which the Secretary General Bulletin's definition of "sexual exploitation" ignores.¹⁵⁹

An example of this is where transactional sex culminates in survival sex, where the reality of deciding to exchange sex for aid is made in circumstances of severe deprivation and insecurity, with a lack of meaningful choice.¹⁶⁰ Peacekeepers abuse the context of desperation to coercively control individuals into sex, knowing it might be their only escape from starvation and threat to life.¹⁶¹ This argument could be interpreted in line with the inability-to-escape realities inherent in e.g. detention contexts, where transactional sex involves a choice between

¹⁵⁴ CRC (n 50) art 34.

¹⁵⁵ Westendorf (n 6) ch 1, 25.

¹⁵⁶ Mudgway (n 26) 1457.

¹⁵⁷ *ibid* 1456.

¹⁵⁸ *ibid*.

¹⁵⁹ *ibid* 1457.

¹⁶⁰ *ibid* 1456.

¹⁶¹ *ibid*.

sex and an inherent risk to life and health. This lack of a safe alternative choice arguably reflects power/control insofar as individuals depend on peacekeepers to sustain their life, engaging in sex to access basic ESC rights.¹⁶² These arguments can apply equally to men if they are victims of survival sex, although without the support of gender and child-specific IHRL protections which add weight to cases against women and children.

However, feminist critiques also apply in the survival sex context. Feminist legal theorists such as Dianne Otto and Jena McGill have argued that the ZTP fails to consider the legitimacy of ‘survival sex’ given that the socio-economic pressures in conflict and post-conflict states lead women and girls to look for pecuniary opportunities.¹⁶³ Despite these considerations, Mudgway has argued that such arguments can overestimate the ability of some local women to actually negotiate the terms of an exchange or exercise true agency.¹⁶⁴ She has stated that in the post-conflict context, it is difficult to argue that all women have the legitimate freedom of choice; she noted that survival sex can range from involving a starving young woman being forced to exchange sex for humanitarian aid or assistance which she is already owed, to a local woman who independently approaches peacekeepers to exchange sex for money.¹⁶⁵ It is the former that encapsulates a lack of meaningful choice that fits closer within the power/control paradigm.

Regardless of whether the current control tests can be met in a particular SEA case, because SEA affects women and children disproportionately and its factual nature is distinct from detention and physical beating, it is deserving of separate treatment as a systemic, gender and child-based issue that is ever more prevalent in conflict-affected areas.¹⁶⁶ This warrants more than simply trying to squeeze instances of control in SEA into distinct circumstances, as IHRL already provides a strong normative basis for the protection of women and children from SEA.¹⁶⁷

Given that normative basis, if an SEA case in the UN peacekeeping context were to make its way to a regional human rights court, the court ought to consider that SEA

¹⁶² Westendorf (n 6) ch 1, 36; UN Policy (n 7) 42, para 18.

¹⁶³ Mudgway (n 26) 1456.

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid* 1457.

¹⁶⁶ UN Regional Information Centre for Western Europe, ‘Women and girls are disproportionately affected by conflict-related sexual violence’ (2024) < <https://unric.org/en/women-and-girls-are-disproportionately-affected-by-conflict-related-sexual-violence/> > accessed 9 June 2025

¹⁶⁷ As shown in CEDAW, CRC, Maputo Protocol, ACRWC, Convention of Belém do Pará (Inter-American), and the Istanbul Convention (European).

disproportionately affects women and girls in terms of frequency, the possibility of pregnancy and the subsequent cycles of poverty.¹⁶⁸ Sexual interactions with peacekeepers, in their criminal, exploitative or consensual forms, do not occur in a vacuum.¹⁶⁹ The wider sociological factors in conflict which lead to poverty create an environment where peacekeepers can abuse their position and transactional sex can thrive.¹⁷⁰ The expectation of resources in exchange for sex leads to a perpetuation of dominant-subordinate relationships that are at the root of gender imbalances.¹⁷¹ The environment creates a situation of dependency and leads to the potential for SEA to go unreported, as locals may depend on the continued deployment of peacekeepers to receive income or because they fear the fathers of their children will be repatriated.¹⁷² There is evidence of victim dependency whereby those abused seek further transactional encounters.¹⁷³ The sociological context involves distorted power dynamics between men and women exacerbated by conflict, meaning any expression of agency can mask how that context removes the ability to make real choices.¹⁷⁴ It is necessary to account for the cultural context in which SEA in peacekeeping occurs: gender based violence operates within a legacy of brutal colonial rule, severe poverty and instability, foreign intervention and human rights violations, where it becomes normalised.¹⁷⁵ To consider the engagement of women in transactional sex as an exercise of agency may oversimplify the reality of such relationships. As Mudgway has argued, it is not about agency but survival.¹⁷⁶ These factors must be considered when applying the power/control test to such cases.

The overwhelming evidence as to SEA in peacekeeping against children, both girls and boys, is self-explanatory in demonstrating their inherent vulnerability to be subjected to power/control. One factor contributing to their vulnerability to SEA arises from an assumption that children are unaware of their rights and reporting is an inherently more difficult process for children.¹⁷⁷ Another is that child victims of SEA also experience “accommodation syndrome”, which involves delayed or unconvincing disclosure due to the secondary trauma

¹⁶⁸ Luissa Vahedi and others, ‘Gender-Stratified Analysis of Haitian Perceptions Related to Sexual Abuse and Exploitation Perpetrated by UN Peacekeepers during MINUSTAH’ (2021) 2 *Sexes* 218, 232.

¹⁶⁹ *ibid* 218.

¹⁷⁰ Sabrina Karim and Kyle Beardsley, “Peacekeeping and the Problem of Sexual and Gender-Based Violence,” in Han Dorussen (eds), *Handbook on Peacekeeping and International Relations* (Edward Elgar 2022) 260.

¹⁷¹ *ibid*.

¹⁷² *ibid*.

¹⁷³ Westendorf (n 6) ch 1, 36.

¹⁷⁴ *ibid* 37.

¹⁷⁵ Vahedi and others (n 169) 218.

¹⁷⁶ Mudgway (n 26) 6, 7.

¹⁷⁷ Audrey L. Comstock, ‘Child Victims and the Punishment of UN Peacekeepers for Sexual Exploitation and Abuse’, (2024) 68(2) *ISQ* 1, 4.

of children retelling their experience of SEA, which could lead to the abuse never being reported at all.¹⁷⁸ The power/control test, then, must be interpreted through a child-centric lens when cases have been reported but have been left unaddressed by the TCC.

It is against this backdrop that the power/control test should be interpreted in any SEA case before regional courts, or where the factual circumstances of an SEA case appear less convincing than in detention and other contexts. This lens is normatively grounded in specialised treaties such as CEDAW, CRC, the Maputo Protocol and the ACRWC. SEA in peacekeeping is a systemic, cultural and post-conflict problem distinct from one-off acts like detention, shooting or brutal beatings. Nonetheless, SEA cases can involve comparable physical control to those cases, but even where it does not, there is a feminist lens through which to view control, where women are left without true choice.

C. A Non-Gender or Child-Specific Workaround: Economic, Social and Cultural Rights

Where the territorial and individual models of power or control present uncertainties when faced with the varying forms of SEA which may take place, particularly in transactional sex and survival sex, an alternative avenue readily exists. This can be taken through the ICESCR, rights of which are also enshrined in the African Charter, the ACRWC and the Maputo Protocol. There is no case law yet establishing the effective control over individuals relating to ICESCR rights, but its extraterritorial applicability can be inferred by its lack of a “jurisdiction” clause.¹⁷⁹ This is an avenue identified by Ralph Wilde, which he has referred to as a “free-standing” model of jurisdiction, where there is no express stipulation as to how and where the obligations in the treaty should apply.¹⁸⁰ This makes for a broader possibility of extraterritorial applicability, as effective control can be complementary to, rather than a substitute for, the “free-standing” model.¹⁸¹ This presents an additional, parallel avenue to invoking ETOs other than by application of the control tests discussed above. A basis for this approach readily exists in the fact that the ICESCR is without a “jurisdiction” clause. Notably, CEDAW, as well as all

¹⁷⁸ *ibid.*

¹⁷⁹ Wilde (n 89) 72.

¹⁸⁰ *ibid* 69.

¹⁸¹ *ibid* 82.

relevant African instruments have this model (see Table Figure 1 above).¹⁸² This further highlights that the African system is a promising route for SEA litigation. This model arguably negates a strict need to establish effective control,¹⁸³ opening up the possibility of a new approach to establishing ETOs where the control model is unsuitable. In the ICESCR, the model is also reflected in the requirements to take steps to realise ESC rights, and to do this within the framework of cooperation and assistance.¹⁸⁴ Moreover, SEA also engages civil and political rights under the ICCPR which contains a jurisdiction clause and therefore the need to establish control, so the ICESCR free-standing clause serves to supplement, rather than circumvent, the existing framework.

Moreover, the ICESCR Committee has interpreted the obligations to respect, protect, and fulfil as extending extraterritorially.¹⁸⁵ It has stated that it involves states taking “steps to respect the enjoyment of the right to food in other countries” and “to respect the enjoyment of the right to health in other countries.”¹⁸⁶ These present broad indications of extraterritorial applicability beyond the control-based tests. States also have ‘minimum core’ obligations under ICESCR, including those in respect of the right to food, health and shelter, regardless of resource constraints.¹⁸⁷ To the extent then, that TCC troops make access to food or humanitarian assistance conditional upon sex, the TCC arguably violates its ETOs to respect, protect and fulfil those rights through its agents. Where such conduct is foreseeable and not addressed by prevention, investigation or prosecution or by disciplinary action, this may provide a basis upon which to argue that the TCC is in breach of its ETOs under the ICESCR. This would provide an additional avenue for women and children to seek redress in relation to transactional sex, and a rights-based avenue for men to seek redress for the same under ICESCR.

By withholding aid from the host population in exchange for sex, this could be argued to consist of ‘retrogressive steps’, an idea as discussed by Kälin and Künzli.¹⁸⁸ They have considered that, while not absolutely prohibited due to the principle of progressive realisation

¹⁸² See Table Figure 1.

¹⁸³ Wilde (n 89) 82.

¹⁸⁴ *ibid.*

¹⁸⁵ CESCR, ‘General Comment No. 12 on the Right to Adequate Food’ (12 May 1999) UN Doc E/C.12/1999/5, para 36; CESCR, ‘General Comment No. 14 on the Right to the Highest Attainable Standard of Health’ (11 August 2000) UN Doc E/C.12/2000/4 para 39.

¹⁸⁶ *ibid.*

¹⁸⁷ UN Economic and Social Council ‘General Comment No. 3 on The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)’ (14 December 1990) UN Doc E/1991/23.

¹⁸⁸ Kälin and Künzli (n 52) ch 3, pt III, s 6.

of obligations under ICESCR and the obligation to take steps in respect of international assistance and cooperation to the ‘maximum of available resources’, steps deliberately taken that lead to a lower level of realisation of an ESC right are highly concerning and would require the “most careful consideration” and must be “fully justified by reference to the totality of the rights provided for in ICESCR and in the context of the full use of the maximum available resources.”¹⁸⁹ In applying this reading to cases of transactional sex in extraterritorial UN peacekeeping missions, it is difficult to justify such conduct on this basis where the local population is owed basic ESC rights and then basic aid to protect those rights is withheld by UN peacekeepers for sex. In such cases, this may amount to retrogressive interference with the enjoyment of ESC rights, and the failure of a TCC to prevent, investigate or remedy such conduct adds weight to the argument that it is in violation of its ETOs under the ICESCR.

Suppose a peacekeeper from African TCC ‘X’ engages in transactional sex with a starving woman at a displacement camp in an African host state, offering food or access to humanitarian supplies in exchange for sex. Although this transaction appears formally consensual, the claimant may argue before the ACtHPR that the extreme inequality of power between the claimant and the peacekeeper and the circumstances of starvation and economic dependency rendered the transaction coercive and left her in a position without free choice where she needed the aid to survive. Now there are two ways in which the claimant may argue her case before the ACtHPR: first, via the power/control test interpreted through a gender and child-sensitive lens in light of the context in which SEA occurs in UN peacekeeping missions; and second, that making access to essential aid conditional upon sex constitutes a breach of ESC rights and the extraterritorial human rights obligations of the TCC, regardless of whether the power/control test is otherwise satisfied. The TCC may be in violation of its ETOs in respect of ESC rights where it has failed to exercise due diligence to prevent, investigate and remedy that conduct. The second step stands as a mechanism through which to fill any gap in the former approach where SEA may not be considered to meet the power/control test. However, even on its own, the free-standing nature of the African instruments and the ICESCR provides a strong basis for arguing that ETOs may arise without requiring the traditional power/control test to be satisfied in the same manner.

From a practical viewpoint, the Court would first have to establish that State X’s African Charter obligations operated extraterritorially. Since the African Charter does not contain a

¹⁸⁹ *ibid.*

jurisdiction clause limiting its obligations to within its own territory, the claimant could argue that its free-standing nature means that such obligations may operate extraterritorially, regardless of whether effective control was exercised over her during the incident of transactional or survival sex. The Court could adopt this approach in complement to acknowledging that where a TCC deploys armed UN peacekeeping personnel, they retain sole disciplinary and criminal jurisdiction over them as per the SOFAs and MOUs, and therefore the TCC must at least prevent and respond to foreseeable rights violations arising where its personnel make basic rights conditional upon sex. In this regard, the Court might assess the extent to which the TCC exercised its due diligence obligations under the UN peacekeeping framework as per the SOFAs and MOUs but also under treaties applicable to SEA.

Similar claims concerning breaches of ESC rights may be advanced in the same way via the free-standing model if a case is brought under the ICESCR before the ICESCR Committee or a domestic court in a monist jurisdiction, which may apply the ICESCR directly. In terms of remedying such breaches, as highlighted in ICESCR Committee General Comment No. 14, all victims of violations of the right to health are entitled to an effective remedy in the form of restitution, compensation, satisfaction or guarantees of non-repetition.¹⁹⁰

While significant barriers to admissibility still exist, particularly the requirement to exhaust domestic remedies in the extraterritorial context where a victim may have to try and exhaust remedies in the TCC rather than in their own state,¹⁹¹ this section has established that strategic litigation could proceed through both the power/control-based model of extraterritorial jurisdiction and also through a complementary argument grounded in the ‘free-standing’ nature of treaties without a jurisdiction clause such as the ICESCR and African human rights instruments.

Conclusion

It is clear that the ETO approach to SEA is not without merit. This is evident from the legal framework governing UN peacekeeping, the extraterritorial applicability of relevant treaties

¹⁹⁰ CESCR GC No. 14 (n 186) para 59.

¹⁹¹ The ICESCR Committee, along with the other relevant treaty bodies and regional courts, make the exhaustion of domestic remedies a prerequisite before a case will be admissible before it, see: REDRESS and CRIN (n 38) 63-71.

ratified by the top TCCs, the analysis of power/control in SEA cases in light of regional jurisprudence, and the free-standing nature of the ICESCR and other treaties. That said, it is not without constraints. This is clear in transactional sex, where control might be more difficult to establish relative to detention contexts involving an inability to escape. Therefore, on a conservative reading of relevant control tests, it is uncertain whether courts would establish ETOs for SEA in peacekeeping. However, the analysis has demonstrated that those tests should not be divorced from the gendered, child-specific and socio-economic realities in which such conduct occurs. Viewed in this way, the control-based model may be interpreted so as to encompass many instances of SEA that do not neatly resemble the factual scenarios that arise in existing jurisprudence. Moreover, the complementary avenue through the ‘free-standing’ jurisdictional nature of the ICESCR and the African instruments provide a promising basis for invoking ETOs where effective control, in the way it has been applied to the distinct factual scenarios in existing jurisprudence, is difficult to establish in the SEA context. While acknowledging the ETO approach will not solve SEA by peacekeepers, my hope is that this analysis will inform SEA litigators and NGOs as to the importance of strategic, context-informed litigation when invoking a TCC’s ETOs for SEA if such cases are pursued and make their way to a regional court. Even if that day never comes, the nature of this analysis demonstrates that ETOs for SEA by UN peacekeepers can plausibly be invoked and ought to be seriously considered. On that basis, TCCs should take effective action to prevent SEA, take appropriate action where it has occurred, and provide victims with an effective remedy.¹⁹²

¹⁹² Burke (n 14).

