

## **Ph. D. Evaluation Report**

**Thesis: Sexual Exploitation by UN Peacekeepers**

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**Supervisor: Prof. JUDr. Pavel Šturma, DrSc.**

**Reviewer: Doc. PhDr. Stanislava Hýbnerová, CSc.**

### **1. Introduction:**

The topic of this doctoral thesis is: Sexual Exploitation and Abuse by UN Peacekeepers with particular focus on military personnel. The topic in question is significant for both legal and political reasons. First and foremost, apart from tarnishing the UN's reputation, the sexually motivated misconduct puts the very credibility of the UN peacekeeping missions in question. This is not about a random failure of individuals, but rather a profound problem with a systemic impact. And the number of these serious criminal acts is not in decline. The corrective measures implemented so far within the UN framework have not been sufficiently effective. The gender aspect of the topic is very relevant in this regard, as it is women and children – the most vulnerable groups in society, and the very ones supposed to be protected by the peacekeeping missions' members – that are the victims here.

The thesis' topic is comprehensive in view of the scope of the related questions that touch upon general international law, international criminal law, protection of human rights, application of humanitarian law standards, law of international organisations, as well as the role of international judicial bodies.

Regardless of the frequency with which this topics comes up on various levels and fora (UN institutions, diplomatic and academic circles), it has so far remained without a successful solution, or an efficient application of international law standards. There's therefore no doubt this topic has been very suitably chosen for dissertation in the field of international law. In the same time, it presents a considerable challenge for the author (notably from the point of view of applied methodology).

### **2. On the methodology chosen**

The author has dedicated a rather considerable space to the questions of methodology. Out of the total of 135 pages of subject, 15 outline the reasons of selecting this particular topic, its goals and key questions. It also explicitly lists the selected methodological approaches for addressing specific questions and justifies their application. The timely and fitting nature of the thesis' topic has been justified in the introduction. One could have certain reservation towards the rather generally formulated goals of the thesis and the key questions posed. This certain vagueness makes it rather difficult for the author to consistently formulate and then follow up on the course of ideas throughout the thesis. This makes the exact goal of the author unclear, and the line between the legal and the political view blurry. It should be noted to the author's defence that the UN documents suffer from identical problem.

The author has defined two key questions specifically. The first one attempts to identify the main hindrances that prevent effective punishment of the perpetrators, and presents more of a political than legal analysis. The second question – without giving sufficient context with the first question

and the authors' intention – aims at identifying legal gaps. It is not entirely clear whether the author lacks legal framework (whether it is a question of lack of sufficient legal framework), or if it is an issue of inadequate implementation of applicable rules. In this context I miss a thorough identification and necessary legal analysis of specific criminal acts falling under the category stated in the very title of the thesis. It would be appropriate for the author to deal with these limitations - at least during the oral presentation of the thesis – given that different forms of sexual violence on women in armed conflicts are in the current humanitarian law regarded as a grave breach. The ICC Statute lists rape of women in armed conflicts, be it intra- or inter-state conflict, among war crimes.

### **3. On the structure of the content of the thesis**

The division of the thesis into chapters and sub-chapters covers well the topic in question and corresponds to the outlined goals. The historical introduction on the genesis of peacekeeping missions could be regarded as somewhat superfluous as it contributes little to *legal* analysis. The composition of current peace missions and cultural background of peacekeepers from developing countries have factual, but not legal weight.

Somewhat problematic is also the author's emphasis put unilaterally on the procedural aspects to the detriment of the substantive ones. This concerns notably the chapter on application of international humanitarian law which explores exclusively formal hindrances to its implementation.

Similarly, the chapter on applicability of international human rights law mentions some international covenants for illustrative purposes only and randomly quotes (without a more profound analysis) relevant substantive stipulations.

Given the neglect to the gender aspect of the crimes is understandable, but not acceptable, that the author relativizes – without the necessary legal argumentation – the very gravity of the examined phenomenon from the point of view of interest of the international community (“it is questionable whether acts of SEA are most serious crimes of concern to the international community”). In the same time, the author subjectively questions the participation of the ICC in punishing these crimes (“it is very unlikely that ICC would take action against conduct which bears to some extent the stamp of the UN”).

That the legal perspective was not applied consistently is evident also in the final part of the thesis, where the author states: “as was previously contented, this is a problem of complex nature, perhaps more a political one, and needs to be examined from various angles”.

### **4. On the formal requisites of the thesis**

Regardless of the comments given, the submitted thesis is up to the required expert level. The original, qualified approach to a difficult topic - a topic that is still challenging for international law from both theoretical and practical point of view - needs to be recognised. Equally recognised as useful should be the utilisation of primary sources of law including suitably selected case law of international judicial bodies. The work with expert literature is a testament to author's good knowledge of contemporary world's works.

The expert terminology and competent footnotes contribute to the overall quality of the thesis. Also the thoroughly composed bibliography contributes to the credibility of the thesis.

On the other hand, the extensive use of abbreviations throughout the text, even for terms that are unsuitable for abbreviations, could pose a certain discomfort for the reader.

#### **5. Final assessment**

The comments stated do not diminish the expert quality of the thesis, which as a whole complies with requirements for doctoral thesis set for by the Faculty of Law of the Charles University in Prague.

**For all these reasons and with respect to the mentioned reservations I recommend the Ph. D. Thesis of Mgr. Jan Králík LL. M. titled "Sexual Exploitation and Abuse by UN Peacekeepers" for acceptance.**

#### **Question to the defendant:**

1. In author's view, are sexual misbehaviours committed by UN peacekeepers relevant subject of examination of international legal framework for functioning of peacekeeping forces?
2. Is the UN obliged under international law to compensate – at least partially – the victims of sexual misbehaviours committed by UN peacekeepers?

Done in Prague on 8 September 2017



Doc. PhDr. Stanislava Hýbnerová, CSc.