SEXUAL EXPLOITATION AND ABUSE IN UNITED NATIONS PEACE OPERATIONS – WITH SPECIAL REGARD TO IMPLICATIONS OF RESPONSIBILITY IN INTERNATIONAL LAW

Synopsis of PhD Dissertation

Written by: dr. András Hárs

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Supervisors:

Dr. László Blutman, PhD
Professor

Dr. Imola Schiffner, PhD
Senior Lecturer

University of Szeged
Faculty of Law and Political Sciences
Doctoral School
Szeged, 2021.

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1. RESEARCH QUESTIONS AND STRUCTURE

The main dilemma of the thesis is that although peace operations conducted under the aegis of the United Nations have proven to be a great asset to the maintenance of international peace and security, acts of criminal nature conducted during these operations have tarnished the organization's reputation, severely undermining efforts to attain peace. Therefore, the question arises: is the current international legal framework of international law inadequate in handling the situation or whether the problem is in fact caused by lacking enforcement? In order to answer this question, one has to look at vastly different domains of international law, with often differing regulation, where navigation may very well feel like a legal quagmire with numerous pitfalls.

Crimes committed by armed forces of a state cannot be considered as a new phenomenon: it existed since the dawn of humanity and it has been a major issue for peace operations ever since large scale operations became frequent. Both domestic law and international law tried to either limit or eliminate it as best as they could by using either criminal codes or international treaties respectively. In the second part of the twentieth century, when these crimes were noticed by the media and the broader international community, there has been a noticeable outrage as a result. This signalled the lowering of the threshold, the point, above which these acts are no longer tolerated. Attention to the issue is recent years is mainly caused by three characteristics that describe these acts. Firstly, because these are committed by those who were sent to protect the local population. Secondly, because the victims of the crimes almost always belong to vulnerable layers of society: women, girls and young boys. Thirdly, due to the fact that measures adopted by the UN do not seem to be sufficient in eliminating sexual exploitation and abuse (SEA). Although according to the statistics compiled by the UN's Conduct and Discipline Unit, the number of allegations has fluctuated in recent years, public outcry calling for the UN to take action seems to be ever louder, especially since repeated reform attempts by successive Secretaries-General were not perceived to bring tangible results.

The first question that comes to mind, is: 'Aren't the perpetrators prosecuted?' To which only an enigmatic answer can be given: sometimes. In Chapter 4 of the thesis I endeavour to find out what the legal framework is for holding the peacekeepers to account and how do rules vary for each category of peacekeeping personnel. However, in order to be able to answer these questions, it is imperative to see clearly regarding applicable terminology. Defining how a peace operation is different from other types of armed action is just as vitally important as

defining what sexual exploitation and abuse is. Therefore, presenting the evolution and nature of peace operations in Chapter 2, together with detailing the phenomenon of SEA in Chapter 3 are crucial in understanding the complexity of sexual exploitation and abuse.

The challenges faced by peacekeeping are numerous and may seem daunting, but there are multiple steps which need to be taken. First of all, the reporting and investigating mechanisms need to be strengthened, as this can be the root of solving the problem. Without accurate data, we cannot be certain of the scale of the problem, let alone be able to comprehend it. The OIOS either needs to be reformed to cope with its functions or the competence of investigation in criminal matters delegated to a separate organ. Furthermore, it may be feasible to attain considerable improvement without a new international treaty, which could prove to be hard to realize, through the consistent application of existing norms. As it can be seen through the statistics of the UN, if there's a political will from the Organization and the TCCs it is possible improve the situation in a rapid manner.

Chapter 4 aimed at highlighting the diverse world of UN peacekeeping personnel, their legal obligations regarding SEA, as well the regime of immunities which protects them. In conclusion it can be argued that both military and non-military contingents have a well-established protection regime. The former is protected by the MoU and the SoFA, granting exclusive jurisdiction to the TCC, while the latter is governed by UN Staff Rules and Regulations, as well as the UN Charter and the 1946 Convention on the Privileges and Immunities of the UN. While both seem like a closed circuit, through a consistent application of its criminal jurisdiction and constant and open communication with the Organization, the TCCs can help remedy the issue. A quick and decisive usage of the waiver can serve as a short-term cure for non-military personnel committing SEA, but it requires the active participation of the Secretary General.

Protection awarded to peacekeepers by IHL linked to their status combatants or non-combatants. In case where use of force is not applied or it is applied only is strict self-defence, peacekeepers are regarded as non-combatants and cannot be lawfully targeted. On the other end of the scale, in case of a peace enforcement operation, they will be deployed on the ground with the purpose of 'taking direct part in the hostilities' and as a result will be deemed to be combatants. The latter test can be invoked in case of extended use of self-defence. If during protecting civilians or carrying out other tasks incorporated in the mandate, peacekeepers 'take direct part in the hostilities' they will be regarded as combatants, however if they do not partake in military activities, they will be regarded as non-combatants eligible to protection. In my

opinion, since their role is centred around the protection of civilian population and they serve as a principal tool for the SC to maintain international peace and security, this protection is warranted. However, a situation should never arise, in which a member of the armed forces of any state, even serving under the emblem of the UN, would find themselves in protected while engaging in military activities all the while they themselves cannot lawfully be made targets. The 1994 Safety Convention and the SG's 1999 Bulletin serve as tools for protecting peacekeepers, while at the same time recognizing the binding effect of IHL, albeit not without uncertainties.

Regulating violations of IHL only bear significance if IHL applies in the first place. As advocated by the statutes of international tribunals (ICC, SCSL and to certain extent ICTY), with academia arguing for customary law nature, and national criminal codes incorporating statutory provisions such as war crimes, repercussions for violations of IHL seem to be encased in strong footing. However, if there is a violation of IHL by peacekeeping personnel, it will be the prerogative of national courts to decide the individual criminal responsibility of the perpetrator. Some uncertainty is caused by the scenario where peacekeepers are using force in self-defence, and therefore remain in a protected status, but they exceed the limits of self-defence and violate IHL by doing so. In that case, since they are not bound by any specific provision, only the general principles of IHL will apply, which will nonetheless be sufficient to ensure legal ramifications for the conduct.

The onus of responsibility does not rest solely on the peacekeepers. The responsibility of the United Nations, the organization responsible for creating the mandate upon which peacekeepers act, also needs to be analysed. But is the existence of the mandate and wearing the blue helmet enough for an international organization to be held responsible? Or is it feasible, that more is needed for responsibility to be established? Chapters 5 and 6 are poised to find out whether international law has developed sufficiently to decide on the responsibility of one of its principal subjects as well as analysing concepts of shared responsibility which could be evoked in the interest of the victims.

As an axiom applicable to every domestic legal system that an unlawful act leads to responsibility, the same tenet can be applied to the realm of international law. As Giorgio GAJA, the special rapporteur of the International Law Commission (ILC) on the responsibility of international organizations has put it: *„Someone must always bear the burden of responsibility."* However, applying this principle in practice one faces several hurdles. Although in theory every State and international organization portrays itself as a law-abiding

member of the international community, in practice, they would rely on a vast variety of circumstances in order to avoid such responsibilities. It is a widely accepted fact, that if international organizations can be considered to be subjects of international law and they can be the subject of certain rights and privileges that the other side of that equation, responsibilities also apply, just as it does in case of a state. Fortunately, in international law there are two key documents detailing the responsibility of both States and international organizations. The articles on the Responsibility of States for Internationally Wrongful Acts (RSIWA) has been finalized by the ILC in 2001, while the Articles on the Responsibility of International Organizations (ARIO) has been completed in 2011. Both documents have been adopted by the UN General Assembly as a resolution and it is safe to establish that they possess at least a semblance of soft-law character. It deserves mention that the two documents have a distinctly different legal nature. For RSIWA, it can be safely established that it has mostly codified international customary law, while its more progressive articles can shape state practice. With the necessary *opinio juris* attached, it is safe to say, that most of the provisions of RSIWA - since their adoption nearly two decades ago - have since become part of the normative material of international customary law, even though some elements continue to spark debates (such as the norms on countermeasures). However, for ARIO, the situation is far from self-explanatory. Even GAJA acknowledged in his 2014 introduction to the document that since several articles "*are based on limited practice moves the border between codification and progressive development in the direction of the latter*". The quote is a near perfect description of the status of ARIO. It codifies major elements of the legal norms related to international organizations, but a vast portion of its articles is progressive in nature and haven't found adequate support over the course of the last few years in the practice of States and international organizations.

The basic formula to establish responsibility in international law is quite simple as it merely requires an internationally wrongful act and attribution linking the conduct with a State or IO. Complicating matters slightly, it also needs to be taken into consideration if certain circumstances precluding wrongfulness apply, preventing the establishment of responsibility. Using the thought process of *argumentum a contrario*, if there are no circumstances precluding wrongfulness, but an internationally wrongful act has taken place that is attributable to the State or the international organization, responsibility can be established. The internationally wrongful act is the first step along the path the responsibility, which can happen through active conduct (act), or passive conduct (omission) as well. Regarding SEA, omission is a feasible scenario when for example there is no mission-specific policy in place to combat the occurrence of SEA,

or the force commander or the SRSG does not act, even though there is substantial evidence of SEA taking place. Concerning attribution, it is debatable whether it is the UN or the TCC who should bear the burden of responsibility for SEA taking place in peace operations.

In chapter 5 several contentious issues arising from this unclear status, such as the various modalities of attribution, the issue of "aiding and assisting" as well as *ultra vires* conducts. As a possible or necessary precondition, the legal personality of international organizations will also be discussed. The chapter attempts to move from the gridlock of singularity on responsibility and delves into the possibility of a so-called shared responsibility, which through the acknowledgement that both can be responsible for the same conduct at the same time, might be able to pressure States and international organizations sufficiently to alter their conduct towards a more sensible and for lack of a better word, responsible attitude. Last but not least, two aspects of individual criminal responsibility will be addressed, namely the feasibility of International Criminal Court's procedure on the one hand and the proposal for the establishment of the so-called tri-hybrid court promoted by academia on the other.

Last, but not least, one should not forget the third party in this dilemma: the State. The State, which sends the peacekeepers. Do they give explicit orders the peacekeepers through the chain of command or do they transfer control over the troops to the UN? Deciding this question will be vital in determining which way responsibility will be leaning. Various courts like the International Court of Justice, the International Tribunal for the former Yugoslavia and the European Court of Human Rights, among others, tried to answer this question through the application of different test of attribution. These tests served to decide whether the State or the international organization is responsible for the acts committed during the peace operation.

Overall, the diverging practice of international and domestic courts can be observed with each forum applying a different test of attribution: the ICJ consequently relying on 'effective control', the ICTY lowering the bar of attribution to 'overall control'. Meanwhile the ECtHR's practice has not yet solidified, ranging from an almost certain state responsibility arising from the application of the 'full command' test to leaning towards the responsibility if IOs with 'ultimate authority and control'. The ECtHR also managed to find the middle ground in the *Jaloud* case, as if effectively utilized the 'effective control' test, but later diverted from that reasoning. It can also be seen that unified legal practice is hard to achieve even on a domestic level as seen by the example of the Netherlands, where in the same situation (the massacre of Srebrenica), slightly differing facts resulted in vastly different judgments by the Supreme Court of the Netherlands in the *Nuhanović* and *Mothers of Srebrenica* cases.

It is the ambition of this thesis to not only analyse the mechanical aspects of the current system, but also to provide alternatives, possible paths for the future. In the last chapter various ideas of reform will be addressed, which came from renowned scholars of the international community or from NGOs devoted to the subject or from the author of the thesis himself. The *de lege ferenda* section is based on two primal notions. One of these notions is the amount of political will required by stakeholders (mainly States and the UN) in order for initiatives and improvements to be incorporated into the current structure of norms. This idea led to a so-called tiered approach, where actions are categorized based on amount of political will necessary in order to adopt and implement them. The other notion is the realistic aspect. Unrealistic concepts, such as compulsory on-site court martials which would require changing close to 200 criminal codes and possibly some constitutions were discarded. Furthermore, only those solutions can be accepted which do not endanger the system of peacekeeping as a whole. The goal of this thesis is not to provide theoretical grounds to dismantle peacekeeping as it has proven to be a major accomplishment of the international community and the UN - helping numerous areas where no single state was sufficiently interested - but to help renew and revitalize the system by eradicating the stain which threatens to overshadow its many extraordinary feats.

Through this multi-tiered approach, the plague of SEA that has haunted the UN for decades could be efficiently combated. Adopting a holistic approach and taking small steps at a time while widening the scope of commitments along the way could be a feasible solution. However, every single step requires a consistent commitment from the UN, even when media attention is not focused on the Organization as a result of a major ongoing scandal. It is equally important to note that although this thesis is primarily focused on issues concerning international law, a truly holistic solution must go beyond and combine the fields of international humanitarian law, criminal law, institutional law, but not just legal sub-systems, but it must also tackle financial, political, diplomatic, sociological and psychological questions as well.

Tackling the phenomenon of SEA from multiple angles such as pre-deployment training and vetting of personnel, enhanced communication and sharing information, prioritizing victim's claims and protecting whistle-blowers, increasing participation of women on all levels and not allowing the immunity of military and civilian personnel to result in impunity are cornerstones of the multi-pronged approach that would lead to a systematic overhaul of peace operations. Dialogue between troop-contributing countries and the UN staff should be

considerably strengthened in order to maintain cooperation and to provide solid reinforcements in the field of personnel base for future operations.

Peacekeeping has been successful in numerous states during more than seven decades of its existence and provided tremendous help in areas where no other help would come. With these perspectives taken into consideration it is vital to get a sound legal framework within which accountability can take place, and to persuade the troop-contributing countries to take action against these crimes, even if they are committed by their own peacekeepers. It is my firm belief that peacekeeping is worth reforming and that we have most of the necessary reforms drafted for us. Therefore, it is necessary to encourage the governments of troop-contributing countries and the leadership of the UN to cooperate in this matter and to put a stop to sexual abuse and exploitation once and for all.

Therefore, the main research questions are firstly conceptional ones dealing with the connection between sexual crimes and peace operations of why the phenomenon arose and persisted despite numerous attempts to eradicate it. Secondly, the normative framework needs to be unravelled to decide whether there is substantial legal background in order to combat the phenomenon. Thirdly, two main questions regarding responsibility need to be addressed: whether besides the individual criminal responsibility of the perpetrator the responsibility of States and international organizations can be ascertained (the dogmatic base for responsibility) and how courts possess the possibility to decide on the issue of responsibility (the jurisdictional question).

2. METHODOLOGY

The main analysis used four distinctive methods while compiling the thesis. Firstly, the systematic approach was utilized by looking into the issue of finding the place of individual legal institutions in the structured order of international law and by doing so remarking on the nexus between these institutions, mapping interconnectedness and correlations.

Secondly, grammatical, logical and teleological interpretations of the norms of international law, both in terms of treaties and their additional protocols with commentaries and also international customary law as well as certain aspects of soft law, such as the resolutions of the United Nations General Assembly and internally binding documents, namely the Secretary-General's bulletins were used.

Thirdly, the practice of various international and national tribunals was analysed with the goal of finding tendencies which could determine the future application of international law. This was supplemented by empirical research found during interviews with different Hungarian officials, serving in the army, police, prosecutor's office and court.

Last but not least, contemporary jurisprudence has been observed in order to process the results of the theoretical accomplishments of scholars. Moving beyond a simple factual description, the various ideas were faced against each other in an attempt to find the best possible solution while providing a critique regarding non-feasible options, whether these proposed solutions have been discarded due to legal, practical or logical reasons. The thesis is not limited to descriptive and comparative analysis as it also contains numerous interpretations by the author, which have sometimes been incorporated in order to provoke the reader into starting a discussion on the subject matter.

Additionally, statistics and data was used to form and supplement the factual basis of interpretations and conclusions in the analysis from either the UN's own websites or other international organizations and NGO's own disclosed material as well as self-made charts and simplified graphs illuminating the process to help better understand the phenomena or compiled with the goal of possessing further applications in education.

3. CONTRIBUTIONS OF THE THESIS

A.) Prism of responsibility

There is a vast literature available regarding human rights concerns, the application of the norms of international humanitarian law as well as international criminal law, but the more traditional aspect of state responsibility and those of international organizations are much harder to come by, especially in this depth.

B.) Dogmatic clarity

Throughout the thesis, the exact meaning and correct application of terminology was emphasized consistently. As a result, several subchapters and self-made charts have been created to differentiate between expressions that are utilized in a seemingly similar concept (such as separating coercive action, peace operations and humanitarian intervention assistance or highlighting the nuances of various forms of gender-based criminal acts).

C.) Modern tendencies

Novel approaches that move beyond currently widely accepted legal theory are analysed broadly. From applying notion of the Responsibility to Protect to shared responsibility, the dissertation aims to shift academic debate from the traditional flow of discussion to more modern and victim-friendly viewpoints and solutions.

D.) Holistic approach

The scope of the thesis is not limited to analysing the responsibility segment of international law. Historical, systematic and issues related to security implications are also detailed. Due to limitations however, interdisciplinary directions (economic, psychological, socio-cultural, etc.) are only alluded to.

E.) Structured recommendations

While most studies only highlight a smaller fragment of a recommendation, this thesis aims to bring a multiple-tiered set of debate-inducing ideas to the table. If only one or two of these proposals are implemented in practice, they might serve the purpose of evading another major occurrence of sexual exploitation and abuse.

F.) Highlighting tendencies

One of the goals of the thesis is to analyse the topic in such detail, that regularities and tendencies surface. One such finding is the cyclic approach that preventive decision-making is hard to come by and the international community (with the UN involved) is keen on reforming its institutions only after a major scandal has pushed to organization in that direction. However, the cyclic approach also means that for the next round of reform, the UN can draw upon the fruits of academic labour waiting to be implemented.

4. LIST OF CONFERENCES WHERE THE AUTHOR GAVE A PRESENTATION ON THE SUBJECT OF THE THESIS

1.) 2020.11.04. Ahmedabad, India – online
Conference title: Law and Justice in Globalizing World
Title of Presentation: Sexual Exploitation and Abuse by UN Peacekeepers

2.) 2019.06.18. Valencia, Spain
Conference title: University of Valencia Summer School for Young Researchers
Title of Presentation: Women in UN Peacekeeping – How Female Participation is Shaping Peace Operations

3.) 2017.06.09. Timisoara, Romania
Conference title: THE INTERNATIONAL CONFERENCE OF PHD STUDENTS IN LAW AND LAW STUDENTS IXth Edition
Title of Presentation: A Comparative Analysis of UN and NATO Status of Forces Agreements

4.) 2015.12.12. Győr, Hungary
Conference title: A jogtudomány sajátossága [The Speciality of Jurisprudence]
Title of Presentation: The Legal Status of Personnel in Multinational Peace Operations

5.) 2015.05.29. Debrecen, Hungary
Conference title: XII. Debreceni Doktorandusz Konferencia [12th Conference of Doctoral Students in Debrecen]
Title of Presentation: A védelmi felelősség megjelenése a békefenntartásban [The Appearance of R2P in Peacekeeping]

6.) 2015.04.09-10. Vilnius, Lithuania
Conference title: 3rd International Conference of PhD Students and Young Researchers - SECURITY AS THE PURPOSE OF LAW
Title of Presentation: Peacekeeping: an asset or a risk to international security

7.) 2014.12.12. Győr, Hungary

Conference title: A jogtudomány sajátossága [The Speciality of Jurisprudence]
Title of Presentation: A felelősség megosztásának realitása a békefenntartás szemszögéből [The Reality of Shared Responsibility from the Perspective of Peacekeeping]

8.) 2014.06.25. Szeged, Hungary
Conference title: Alapelvek és Alapjogok [Principles and Fundamental Rights]
Title of Presentation: A békefenntartás hatása az állami szuverenitás és a beavatkozás tilalmának alapelveire [The Effect of Peacekeeping on the Principles of State Sovereignty and the Prohibition of Intervention]

9.) 2014.06.13. Debrecen, Hungary
Conference title: XI. Debreceni Doktorandusz Konferencia [9th Conference of Doctoral Students in Debrecen]
Title of Presentation: Accountability in Peacekeeping – Past Experiences and Possible Future Trends

10.) 2014.03.21. Budapest, Hungary
Conference title: Az állam szuverenitása: eszmény és/vagy valóság [State Sovereignty – Fiction or Reality]
Title of Presentation: Szuverenitás és nemzetközi jogi felelősségre vonás [Sovereignty and Accountability in International Law]

5. LIST OF PUBLICATIONS OF THE AUTHOR ON THE SUBJECT OF THE THESIS

1.) HÁRS, András: *The United Nations*
In: Fejes, Zsuzsanna; Sulyok, Márton; Szalai, Anikó (eds.) Interstate relations
Szeged, Hungary, Iurisperitus, (2019).

2.) HÁRS, András: *The Responsibility of International Organizations and States for Multinational Military Operations in the Practice of the European Court of Human Rights*
In: Alexander, J Bělohlávek; Naděžda, Rozehnalová (szerk.) Czech Yearbook of International Law: Volume IX 2018 International Organisations
The Hague, The Netherlands, Lex Lata BV, (2018).

3.) HÁRS, András: *Democratic Tendencies in the United Nations Security Council?*
In: Central and Eastern European Legal Studies, Issue 2, (2018).

4.) HÁRS, András: *Nemzetközi szervezetek határozatai [Resolutions of International Organizations]*
In: Jakab, András; Fekete, Balázs; Könczöl, Miklós; Menyhárd, Attila; Sulyok, Gábor (eds.) Internetes Jogtudományi Enciklopédia [Online Encyclopaedia of Jurispridence]
Budapest, Hungary, PPKE JÁK, (2018).

5.) HÁRS, András: *A Comparative Analysis of UN and NATO Status of Forces Agreements and Their Practical Implications*
In: STUDII SI CERCETARI JURIDICE EUROPENE / EUROPEAN LEGAL STUDIES AND RESEARCH, (2017).

6.) HÁRS, András: *The Legal Status of Personnel in Multinational Peace Operations – With Special Regard to Sexual Exploitation and Abuse Committed During Peace Missions*
In: Studia Juridica et Politica Jaurinensis, (2016).

7.) HÁRS, András: *Distinguishing Between the Responsibility to Protect and the Protection of Civilians – An Analysis of the Emergence of R2P Principles in Peacekeeping*
In: Dalia, Perkumienė et al (eds.) Tarptautinis mokslinis – praktinis seminaras International scienti_c practical seminar : „Šiuolaikinės teisės tendencijos tarptautinės teisės kontekste 2015" - „Actualities of modern law in international context 2015"
Kaunas, Lithuania: Kauno kolegija, (2015).

8.) HÁRS, András: *Peacekeeping: An Asset or a Risk to International Security*
In: Skirmantė, Makūnaitė; Gintarė, Tamašauskaitė-Janickė; Vigita, Vėbraitė; Jurgita, Randakevičiūtė (ed.) Security of the Purpose of Law - 3rd International Conference of PhD Students and Young Researchers
Vilnius, Lithuania: Vilnius University, (2015).

9.) HÁRS, András: *A felelősség megosztásának realitása a békefenntartás szemszögéből [The Reality of Shared Responsibility from the Perspective of Peacekeeping]*
In: Kecskés, Gábor (ed.) Doktori Műhelytanulmányok 2015
Győr, Hungary, (2015).

10.) HÁRS, András: *A védelmi felelősség megjelenése a békefenntartásban [The Appearance of R2P in Peacekeeping]*
In: Profectus in Litteris, (2015).

11.) HÁRS, András: *Accountability in Peacekeeping Past Experiences and Possible Future Trends*
In: Profectus in Litteris, (2014).

6. SUMMARY IN HUNGARIAN / MAGYAR NYELVŰ ÖSSZEFOGLALÓ

A disszertáció célja, hogy betekintést nyújtson az ENSZ békeműveleteinek kihívásaiba, azon belül is a szexuális bűncselekmények elkövetése okozta nehézségekbe. Az értekezés első sorban arra keres választ, milyen jellemzőkkel bír és milyen következményei vannak a békefenntartásban részt vevő személyek által elkövetett szexuális bűncselekményeknek, valamint arra, miként állapítható meg a felelősség ezen cselekmények kapcsán.

A dolgozat írása során vált világossá, mekkora káosz mutatkozik a területen alkalmazandó terminológia kapcsán, ezért az első részben a békefenntartás maga kerül taglalásra, hogy tisztán látható legyen, mi vezetett a jelenség elterjedéséhez. Jelentős részben a polgári lakossággal való intenzív kapcsolat, amely az 1990-es évektől kezdve jellemzi mandátumokat tekinthető az egyik origónak, bár szexuális bűncselekmények korábban is kerültek szórványosan elkövetésre. A békefenntartás világának bővülésével – amelyet a missziók számának és a bennük tevékenykedő személyzet létszámának növekedése jelez a 2015-ig tartó időszakban – a visszaélések száma is megnövekedett. A békeműveleteket taglaló második fejezet fogalmi elhatárolást biztosít az ENSZ Biztonsági Tanácsa kényszerítő intézkedései, valamint a humanitárius intervenció és a békefenntartás között, amely által a későbbi fejezetekben azonosítható az alkalmazandó normák köre. Szintén ebben a fejezetben kerül sor az újabb tendenciák vizsgálata, vagyis, hogy a védelmi felelősség elvének (R2P) mennyiben mutatható ki kézzel fogható hatása az ún. harmadik generációs békeműveletekben.

A békemissziók elhatárolási és fejlődési kérdései után a szexuális bűncselekmények morfológiai kérdései kerülnek terítékre, amelynek keretén belül fogalmi tisztázásra, a potenciális elkövetők és áldozatok vizsgálatára is lehetőség adódik. További elemzést igényelt a szexuális bűncselekmények felbukkanása és az ENSZ erre adott válaszainak összevetése, amely rámutatott egyfajta ciklikusságra. Eszerint a nagy médianyilvánosságot kiváltó rendszerszintű visszaélések felbukkanása után megfigyelhető egy átfogó vizsgálat, majd ezt követő reformintézkedések, amelyek azonban néhány év után fokozatosan elhalnak, egészen addig, amíg egy újabb, nagyobb horderejű botrány nyomán nem nehezedik ismét nyomás a szervezetre. Ez a minta érhető tetten a 2002-es nyugat-szaharai menekülttáborban elkövetett cselekményeknél és nem sokkal később a 2003-as kongói eseményeknél, amely következtében még 2003-ban bevezetésre került a zéró-tolerancia és nem sokkal később megszületett a Zeid-jelentés. Hasonló tendencia mutatkozik a Közép-afrikai Köztársaságban 2013-2015 között elkövetett cselekmények vonatkozásában is, amely révén 2015 decemberére megszületik a

Deschamps-jelentés, valamint 2016-2017-ben Ban-ki-Moon és António Guterres főtitkárok megkezdik a reformtervek legújabb hullámát.

A disszertáció negyedik fejezetének középpontjában a jogi keretrendszer feltérképezése áll. Nem segíti a felelősség megállapítását, hogy a békefenntartókat küldő és a műveletet fogadó állam között nincs szerződéses kapcsolat. Mindkét fél az ENSZ-szel köt szerződést, amely azonban a joghatóság alóli mentesség sziklaszilárd deklarálása mellett a felelősségre vonás iránti igényt csak *naturalis obligatio*-ként írja elő. Az állami szinten tapasztalható összetettséget tovább növeli az egyéni büntetőjogi felelősség kapcsán joghatósági gátat emelő mentességi megállapodások rendszere, amely katonai személyzet tagjai esetén a küldő állam kizárólagos büntető joghatóságát irányozza elő. A humanitárius jog alkalmazhatósága - amely szintén a negyedik fejezetben kap helyet – kardinális jelentőségű az egyéni felelősség megállapítása szempontjából. A hadijog szabályainak megsértése nemzetközi büntetőjogi felelősséget eredményezhet, abban az esetben is, ha a Nemzetközi Büntetőbíróság előtti felelősségre vonásra jelenleg nem látszik lehetőség és nem is feltétlenül ez a fórum volna a legmegfelelőbb platform az egyéni bűnösség megállapításához.

Az ötödik fejezet a nemzetközi jog másik alrendszere, a felelősségtan talajára kalauzolja az olvasót, ahol az államok és nemzetközi szervezetek felelősségét tartalmazó *soft law*-jellegű és szokásjogi normák alkalmazásának lehetősége kerül elemzésre. A fejezetben helyet kap a megosztott felelősség koncepciójának ismertetése is, amellyel a szakmai diskurzus elmozdítása a cél az állam vagy nemzetközi szervezet tengelyen mozgó bináris felelősségi modell meghaladása révén egy áldozatközpontú osztott megoldás irányába.

A hatodik fejezetben a bíróságok esetjoga kerül vázolásra. Érdekesség, hogy nemzetközi bírói fórum előtt békefenntartó még nem került felelősségre vonásra szexuális bűncselekmény elkövetésért, ezért csak analógia révén vizsgálható a probléma. Ennek keretében a nemzetközi törvényszékek multinacionális fegyveres konfliktusban elkövetett cselekvényeket vizsgáló esetei vizsgálhatók, azonban ez megköveteli a betudhatósági mellett a joghatósági kérdések vizsgálatát is. Mintegy kitekintésként vizsgálandó a holland bírói fórumok gyakorlata, ahol több ügyben is markáns, ámde egymásnak valamelyest ellentmondó ítéletek születtek a holland békefenntartók srebrenicai mészárlásban való részvétele ügyében.

A szexuális bűncselekmények jelensége sokrétű, okai mélyen gyökereznek, ezért a megoldási javaslatok sem a témakör egy részelemére, hanem holisztikus megközelítést alkalmazva több területre vonatkozóan fogalmaznak meg javaslatokat. A problémakör sokrétű,

így minden olyan reformtervnek, amely a megoldást célozza, figyelembe kell vennie a jogi és jogon kívüli területeket is (gazdasági, pszichológiai, szociológia, biztonságpolitikai és egyéb vonatkozások). Az értekezés utolsó részében vitaindító jelleggel kerülnek felvetésre ötletek aszerint, hogy adminisztratív eszközökkel megvalósítható rövid távú, politikai akarattal végig vihető középtávú vagy a jelenlegi *status quo* megváltoztatását igénylő hosszútávú megoldást takarnak. Szintén itt merül fel részletesebben a nők szerepének elemzése a békemissziókban, valamint tágabb értelemben a békeépítés tevékenységében.

Végezetül nem szabad megfeledkeznünk róla, hogy a békefenntartásban részt vevő nők és férfiak a többségi társadalom számára felfoghatatlanul nehéz körülmények között, életük kockáztatásával végzik hivatásukat immár több, mint 70 éve. Áldozatvállalásuk során több tucat államban Haititől Kambodzsáig, Angolától Tádzsikisztánig vállaltak jelentős szerepet az állam és a közbiztonság hosszú távú helyreállításában. A békefenntartók kis hányada által elkövetett szexuális bűncselekmények azonban súlyos fekete foltként nehezednek a kék sisakra, amely gyökeres változtatás nélkül beszennyezheti elért eredményeiket.