The Use of PMSCs by the United Nations in Times of Armed Conflict

Application of IHL and Responsibility Matters

MASTER THESIS

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Chapter 1: Introduction

Private actors are more than ever involved in what traditionally have been considered as public utilities or functions managed by the competent governmental authorities. Thus, private companies do perform an extensive range of services; they have been hired to provide essential tasks such as the provision of water, education, health, as well as, law enforcement, prison management, military training, and combat functions.

The companies dealing with military and security matters are on the rise, and today they provide services to a very wide client list, which includes states and international organizations (IOs). It is well known that these companies have been deployed in a large number of armed conflicts, and indeed, some of them have become prominent in the sector not only for their military results but also for their abuses of international humanitarian law and human rights. Surprisingly, it is lesser known that the United Nations (UN) has also had recourse to private military and security companies in the context of United Nations military operations with regard to the maintenance of international peace and security.

The engagement of private military security companies in UN peace operations entails multiple legal questions. This dissertation is especially intended to shed some light over the extent to which PMSCs deployment in UN peace operations is compatible with international humanitarian law and how the law of institutional responsibility deals with the violations of international humanitarian law committed by such companies when providing services to the UN. For that purpose and to that extent due recourse has been made to the most relevant international law sources on the matter, such as the Geneva Conventions, their Additional Protocols, and other relevant instruments such as the ILC Articles on State and IO responsibility, and the Montreux Document. Jus cogens and international custom, including the practice of international organizations and states, and *opinio juris* as ascertained by legal scholars and the International Court of Justice, play an essential role in this dissertation, since the United Nations has not become yet a party to any IHL treaty, thus employing an inductive methodology. A comparative approach was adopted in regard to the observations of the most eminent institutions and jurists, and domestic and international courts, including the International Court of Justice and the European Court of Human Rights for the purpose of ascertaining the different rules of attribution of conduct existing in international law. Besides, certain decisions of the latter Court were analysed in order to clarify by analogy whether the application of international humanitarian law and the imputation of acts can function under the same degree of control test.

This study is divided into 3 chapters, chapter 1 is made up by the present introduction where we introduce the topic, the methodology, sources and its structure.

In chapter 2, we undertake a brief analysis of what can be considered as private military and security companies, the services they offer and their role in UN peace operations and the different ways in which they can become involved in such operations.

Chapter 3 aims to answer the question of whether the United Nations can be held accountable for violations of PMSCs providing services to the UN for violations of international humanitarian law, for that purpose, the chapter is composed of two sections. The first section is consecrated to

ascertain whether the United Nations can become a party to an armed conflict, and therefore IHL be applicable. The second section studies the different theories related to the attribution of conduct in order to establish the institutional responsibility of the UN.

Finally, in regard to the expressions used, it is important to highlight that in this work we will refer to as 'peace operations' all sorts of missions intending to maintain or restore the order independently of the official nomination, be peacekeeping, peace-enforcement, robust peacekeeping, etc.

Chapter 2: PMSCs in the United Nations

Many names have been used to define companies that provide military and security services. The term 'private military and security company' can be deemed to be the most widespread.¹ However, those companies and users such as states or international organizations are very aware of the negative connotations of the term 'military'. In consequence, it has been suggested that other terms such as 'private security company' or 'private security (service) provider' are preferable.² Despite the current tendency emphasising the security aspect, some of these companies became universally known for the provision of actual combat services to a few African governments during the 90s in their effort to crush local militias and rebel armed groups. Executive Outcomes in Angola and Sierra Leone and Sandline International in Sierra Leone and Papua New Guinea are examples.

It has been argued that PMSCs no longer provide combat services,³ however, a few companies, as well as the International Stability Operations Association (ISOA) have lobbied for PMSCs participating in combat scenarios and in robust mandate operations.⁴ In any case, there are instances where these contractors have been alleged to take hostilities on the battlefield. For instance, that was the case in 2004 for Blackwater Worldwide in Najaf, where not only did their employees participate in a roof-top shooting but could also be seen giving orders to US soldiers.⁵

These companies can provide a wide range of services apart from the mentioned combat functions, such as translation, interrogation, intelligence, logistics, demining, military training, close protection, bomb loading on aerial vehicles like drones, etc.⁶ It has been proposed that, depending on the specific task they perform, it is necessary to make a distinction between companies that provide military/combat-related activities from those that are dedicated to security/non-combat services.⁷ However, such distinction does not seem appropriate since most of the activities undertaken by these companies can be deemed to be similar, if not the same, as the tasks historically

1 Ian Ralby, 'Private Military Companies and the Jus ad Bellum' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 1133.

2 See ibid 1133; Sarah Percy, 'Morality and Regulation' in Simon Chesterman and Chia Lehnardt (eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (OUP 2007) 12-14 (hereinafter 'Morality and Regulation').

3 Corinna Seiberth, *Private Military and Security Companies in International Law: a Challenge for Non-binding Norms: the Montreux Document and the International Code of Conduct for Private Security Providers* (Intersentia 2014) 38 (hereinafter *PMSCs in International Law*); Chia Lehnardt 'Peacekeeping' in Simon Chesterman and Angelina Fisher (eds) *Private Security Order: the Outsourcing of Public Services and Its Limits* (OUP 2009) 129, 139, 147 (hereinafter 'Peacekeeping'). Dana Priest, 'Private Guards Repel Attack on U.S. Headquarters' (Washington Post 2004) <<https://www.washingtonpost.com/archive/politics/2004/04/06/private-guards-repel-attack-on-us-headquarters/fe2e4dd8-b6d2-4478-b92a-b269f8d7fb9b/>> accessed 22 July 2017.

4 See IPOA Peace Operations Institute, 'WhitePaper' (2007) in Lehnardt, 'Peacekeeping' (n 3) fn 5; ISOA, 'History of ISOA' <<https://stability-operations.org/about/history>> accessed 22 July 2017. IPOA (International Peace Operations Association) was lately renamed as ISOA (International Stability Operations Association).

5 Ralby, 'Private Military Companies and the Jus ad Bellum' (n 1) 1135. See video of Blackwater employees in Najaf: Dailymotion, 'Blackwater Sniper in Najaf' <<http://www.dailymotion.com/video/x9hi6f>> accessed 22 July 2017.

6 Percy, 'Morality and Regulation' (n 2) 13; Seiberth, *PMSCs in International Law* (n 3) 38; Mirko Sossai, 'Status of Private Military and Security Company Personnel in the Law of International Armed Conflict' in Francesco Francioni and Natalino Ronzitti (eds), *War by Contract: Human Rights, Humanitarian Law, and Private Contractors* (OUP 2011) 211.

7 See Ralby, 'Private Military Companies and the Jus ad Bellum' (n 1) 1135.

performed by the military.⁸ Therefore, for simplicity and comprehensive reasons we will refer them all as 'private military and security companies' or PMSCs, regardless of the exact extent of their activities.

It has been suggested that International Organizations such as the UN should rely on the private market for security and military purposes, which if controlled and regulated, could be highly beneficial in terms of reducing expenses and dependence on voluntary contributions of member states,⁹ and, in the words of the Foreign Secretary of the UK Jack Straw, to 'respond more rapidly and more effectively in crises'.¹⁰ Other authors even go further and claim that PMSCs will have a major role as 'protectors and defenders of humanitarian operations in zones of conflict'.¹¹ In any case, the reality is that PMSCs already provide their services to personnel of international organizations who often are unprotected and become the objects of attacks by criminals, armed groups and terrorists.¹² The UN is not an exception, and has hired PMSCs on very numerous occasions.¹³

Unfortunately, the UN releases very limited information regarding its contractual relations with PMSCs.¹⁴ However, several sources affirm that international organizations like the UN rely on PMSCs in order to perform several and very distinct tasks: from construction of barracks and transport of goods, to risk analysis, security training, crisis management advice, security assessment intelligence, policing, demining, ordnance disposal and other forceful tasks.¹⁵ The Organization not only has requested PMSCs services through the headquarters but also through subsidiary organs in the field, programs, agencies, departments, and divisions, along with the World Food Programme (WFP), the UN Development Programme (UNDP), the UN Children's Fund (UNICEF), and other UN missions.¹⁶ For instance: the UN procured the services of Charter Incorporated of Oregon to transport UN troops to their operational areas and heavy supplies;¹⁷ in 2001, the UN Transitional Administration in East Timor (UNTAET) hired KZN security and Empower Loss Control Services, to provide local intelligence;¹⁸ in 2005, the UN Mission in Liberia (UNMIL) employed DynCorp for restructuring the Liberian army¹⁹; in that same year the UN Office for Project Services contracted Aegis to provide security in relation to the constitutional referendum in Iraq.²⁰; PMSCs were also extensively used during the Yugoslav Wars, in particular, the UN Protection Force (UNPROFOR) employed 5 PMSCs and the UN Interim Administration Mission in Kosovo (UNMIK) so did it, the

8 See Ralby, 'Private Military Companies and the Jus ad Bellum' (n 1) 1133.

9 Nigel White, 'Institutional responsibility for private military companies' in Francesco Francioni and Natalino Ronzitti (eds), *War by Contract: Human Rights, Humanitarian Law, and Private Contractors* (OUP 2011) 381 (hereinafter 'Institutional Responsibility'); Malcom Patterson, 'A Corporate Alternative to United Nations Ad Hoc Military Deployments' (2008) *Journal of Conflict and Security Law* 215, 215.

10 BBC, 'Peacekeeping "role" for mercenaries' (13 February, 2002) <http://news.bbc.co.uk/1/hi/uk_politics/1817495.stm> accessed 25 July 2017.

11 Kevin O'Brien, 'What Should and What Should Not Be Regulated?' in Simon Chesterman and Chia Lehnardt (eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (OUP 2007) 45.

12 See for instance Report of the Secretary-General, 'Safety and Security of United Nations Personnel' (2000) UN Doc A/55/494; UN Press Release 'At Least 32 United Nations Personnel Killed as Assaultants Deliberately Attack Peacekeeping Operations in 2016' (2017) ORG/1643.

13 Åse Østensen, 'UN Use of Private Military and Security Companies: Practices and Policies' (2011) 3 *The Geneva Centre for the Democratic Control of Armed Forces* 1, 7 (hereinafter 'UN Use of PMSCs')

14 Ibid 7-8.

15 Lehnardt, 'Peacekeeping' (n 3) 207. See Østensen, 'UN Use of PMSCs' (n 13) 9,13

16 Østensen, 'UN Use of PMSCs' (n 13) 11.

17 Traci Hukill, 'Should Peacekeepers Be Privatized?' (2004) 36 *National Journal* 1526, 126-1527.

18 Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (updated edn, Cornell University Press 2005) 183.

19 Lehnardt, 'Peacekeeping' (n 3) 208

20 Østensen, 'UN Use of PMSCs' (n 13) 29.

activities carried out, included border patrolling;²¹ the UN Mission for the Democratic Republic of Congo (MONUC) was not an exception either in this sense; finally, other PMSCs like G4S are regarded by the UN as official vendors.²²

Another way in which these companies can be involved with the UN is through the contributions of its member states. That is to say, a TCN hires and integrates PMSC employees as part of their national contingents.²³ That was the case for the United States, in regard to several UN peacekeeping operations, where it sends forces from several companies such as DynCorp and PAE.²⁴

As mentioned before, PMSCs have been used extensively by the UN for several assignments, however, there is no evidence indicating that the Organization has used them so far for combat purposes in the front-line. Nevertheless, it is very likely that for the nature of tasks they perform they become involved in fighting against armed groups opposed to the UN. In such situations, multiple legal questions arise. It is not possible to address all those questions in this work. Notwithstanding, we will provide answers about the applicability of international humanitarian law to the UN and its institutional responsibility for violations of IHL committed by PMSCs.

21 UK Select Committee on Foreign Affairs, 'Memorandum from ArmorGroup Services Limited: A Contractor's view', Minutes of Evidence (2002) appendix 6 paras 73-80. See Report of the S-G, 'Outsourcing Practices' (2004) UN Doc A/59/227.

22 See UNPD, 'Secretariat Registered Vendors' <<https://www.un.org/Depts/ptd/un-secretariat-registered-vendors>> accessed 21 July 2017. See also Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination, 'Report to the 70th session of General Assembly' (21 August 2014) UN Doc A/69/338.

23 Lehnardt, 'Peacekeeping' (n 3) 207. See Østensen, 'UN Use of PMSCs' (n 13) 10-11.

24 Lehnardt, 'Peacekeeping' (n 3) 208

Chapter 3: Institutional responsibility of the United Nations for breaches of IHL by PMSCs

The aim of this chapter is to ascertain and clarify whether the United Nations can be held accountable for breaches of international humanitarian law committed by PMSCs acting under a peacekeeping operation according to international law.

The first section will address several legal issues regarding International Humanitarian Law and the United Nations, such as whether international humanitarian law is applicable to the United Nations according to its international legal personality, which circumstances are required on the ground to spark off an armed conflict between the Organization and other armed forces, and how the United Nations can become a party to an ongoing armed conflict.

In the second section of the chapter, due account will be taken of the most dominant rules of attribution of conduct identified by international courts, institutions and prominent legal scholars, with the purpose of determining whether wrongdoings of PMSCs can be imputed to the United Nations, and the Organization consequently be considered as internationally responsible.

Section 1: International humanitarian law binding upon the United Nations

1. International legal personality as a precondition.

Until not so long ago, states were considered the only subjects with international legal personality and able to hold rights and bear duties on the international plane. However, that affirmation is no longer valid since other so called 'non-states actors' have been exerting in recent times a great impact on the international stage. International organizations, armed groups²⁵, multinational companies and even individuals²⁶ have been deemed to hold certain obligations and rights under public international law.

25 Armed groups are bound by international humanitarian law rules and also own certain rights like the 'minimum treatment clause' embodied in common article 3 to the Geneva Conventions (hereinafter CA 3 GCs). Armed groups have also been parties to peace treaties with states, see for example the peace agreement concluded between the FARC and the Colombian state: Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera (Colombia-The FARC) (signed 24 November 2016) <<http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Documentos%20compartidos/24-11-2016NuevoAcuerdoFinal.pdf>> accessed 14 June 2017.

26 Individuals have been imposed international obligations, for instance, by the UN Security Council through its counter-terrorist measures: see among others, UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373. Moreover individuals also enjoy rights from human rights treaties.

A natural consequence resulting from the breach of an international obligation by a subject of international law is the international legal responsibility, which is a new obligation aimed at repairing the grievance caused by the misconduct. As a consequence, international obligations can be classified into two categories, primary and secondary.²⁷ In order to hold the United Nations responsible for breaches of international humanitarian law (primary obligations) by PMSCs we will firstly have to analyse whether the UN is even capable to bear duties on the international plane; ie whether the UN constitutes an international organization with separate international legal personality and distinct will from that of its state founders and bound by international humanitarian law.

For the purpose of international responsibility at least, the ILC defines an international organization as 'an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality'.²⁸ The possession of international legal personality is necessary in order to be a subject of international law, capable of bearing rights and duties, and must be 'distinct from that of its member states'.²⁹ Thus, can the UN be considered as an international organization in this sense? An affirmative answer was already given in 1949 by the ICJ in the *Reparation for Injuries* advisory opinion when the Court claimed that the UN possessed 'international personality and the capacity to operate upon an international plane', and therefore being 'capable of possessing international rights and duties'.³⁰ The question must be drawn now as to whether the UN as an entity with distinct will and personality from those of its states founders is bound by IHL.

According to the ILC most of the obligations that are binding on international organizations emanate from their constituent treaties as developed through practice. However, IOs are also bound by the same sources of law that are binding on states, that is to say: treaty law, international custom, general principles of international law and jus cogens.³¹ The ILC's Special Rapporteur, Giorgio Gaja, stated in 2005 that by failing to prevent genocide in Rwanda in 1994 the UN breached a norm of jus cogens.³² Although that field of law is arguably accepted to be binding on international organizations,³³ one can contend that the same does not hold true for customary international law since it is made by states for states.³⁴ Despite that, the ILC and most international lawyers disagree with the latter statement,³⁵ and Amerasinghe even points out that the responsibility of international organizations would be triggered under customary law for misconducts of their servants or agents when acting in pursuance of their functions, or of persons when controlled by the organization, like

27 ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) UN Doc A/56/10, 31 (hereinafter 'ARS Commentaries').

28 Article 2(a) of ILC, 'Draft Articles on the Responsibility of International Organizations' (2011) A/66/10 (hereinafter DARIO); White, 'Institutional responsibility' (n 9) 384: Nigel White argues that unlike corporations, international organizations hold objective legal personality, making them responsible for breaches of international law. Cf Ian Brownlie, *Principles of International Law* (7th edn, OUP 2007) 677.

29 This wording was used by G.G. Fitzmaurice in the definition of the term 'international organization' that he proposed in the context of the law of treaties, see ILC Yearbook (1956) II, 108.

30 ICJ, *Reparation For Injuries in the Service of the United Nations*, Advisory Opinion: ICJ Reports 1949, p. 174, 178-179 (hereinafter *Reparations for Injuries* opinion).

31 White, 'Institutional responsibility' (n 9) 384-385. See ILC, 'Report on the Work of Its Fifty-Seventh Session' (2005) UN Doc A/60/10, 47, 87-88; Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, ICJ Reports 1980, p. 73, [37]; UN, Statute of the International Court of Justice (adopted 26 June 1945) article 38 (hereinafter ICJ Statute).

32 Giorgio Gaja, 'Third Report on Responsibility of International Organizations' (2005) UN Doc A/CN.4/553, 4. (hereinafter 'Third Report').

33 ILC, 'Report on the Work of its Fifty-Fifth Session' (2003) UN Doc A/58/10, 47.

34 See White, 'Institutional responsibility' (n 9) 385

35 White, 'Institutional responsibility' (n 9) 386; ILC, 'Report on the Work of Its Fifty-Seventh Session' (n 30) 87-88.

UN armed forces.³⁶

Organizations like the UN exercise an extensive variety of powers and functions, and it is believed that those organizations 'will have acquired obligations under international law in relation to those functions and the question of the existence of breaches may arise more frequently'.³⁷ Accordingly, it has been asserted that an organization performing missions on the field such as peacekeeping are certainly bound by jus cogens and customary international law among other sources.³⁸ However, since the UN is not currently a party to any IHL treaty,³⁹ can it become bound anyhow to the law of armed conflict? An affirmative answer to that question can only be given from customary international law as we will discuss in the following subsection⁴⁰.

Suffice it to say here that the United Nations is an international organization with international legal personality distinct from that of its member states. It is bound by its constitutive treaty, international agreements to which it is a party, jus cogens, general principles of international law and international custom, moreover, as the UN is able to deploy armed forces on the field where in most cases there is an ongoing armed conflict, customary IHL would also be applicable. Finally, when the UN breaches any of the obligation binding upon it, its international responsibility will be triggered and therefore a second obligation to make full reparation for the injuries caused will arise.

2. The UN as a party to an armed conflict and applicable IHL set of rules

It has been confirmed that in the last subsection that the United Nations is an international organization that possesses international legal personality and is able of bearing duties and hold rights emanating from the different sources of international law. It has been argued that the United Nations cannot become a party to any of the current IHL treaties,⁴¹ therefore, that field of law can only be applied via customary law.⁴² In order to ascertain the exact set of rules of IHL, attention must be drawn to the classical distinction between an international armed conflict (IAC) and a non-international armed conflict (NIAC) since they set up different criteria to become applicable as we will see below.

It has been argued that there is enough state practice and opinio juris confirming that subjects of international law such as international organizations may become a party to an armed conflict,

36 Chittharanjan Amerasinghe, *Principles of the Institutional Law of International Organizations* (2nd edn, CUP 2005) 400 (hereinafter, *Principles of Institutional Law*).

37 Giorgio Gaja, 'First Report on Responsibility of International Organizations' (2003) UN Doc A/CN.4/532, 12.

38 White, 'Institutional responsibility' (n 9) 385.

39 Marten Zwanenburg, 'United Nations and International Humanitarian Law' (2015) Max Planck Encyclopedia of Public International Law <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1675>> accessed 6 May 2017, [3] (hereinafter 'UN and IHL').

40 See Marten Zwanenburg, *Accountability of Peace Support Operations* (Martinus Nijhoff Publishers 2005) 151 et seq (hereinafter *Accountability*); Zwanenburg, 'UN and IHL' (n 39) [6]. See ICRC, 'Rules of Customary International Humanitarian Law' <<https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>> accessed 24 July 2017 (hereinafter 'ICRC CIHL').

41 Neither the Geneva Conventions nor their Protocols contain any provision regarding the accession of any international organization. See Zwanenburg, 'UN and IHL' (n 39) [2].

42 Many provisions of the Geneva Conventions and their Protocols are considered to have been reached customary status. See Zwanenburg, *Accountability* (n 40) 151 et seq; Zwanenburg, 'UN and IHL' (n 39) [6]. See ICRC, 'ICRC CIHL' (n 40).

moreover, no provision expressing the opposite can be found in IHL.⁴³ That field of law is applicable *ratione materiae* whenever there is an 'armed conflict'⁴⁴ between the parties therein. It is widely accepted by legal scholars and institutions⁴⁵, international courts⁴⁶, and military manuals⁴⁷ that the determination of an armed conflict shall be based on a factual basis, regardless of the subjective views of the parties.⁴⁸ In *Boskovski Case* the Trial Chamber of the ICTY stated that

the question of whether there was an armed conflict at the relevant time is a factual determination to be made by the Trial Chamber upon hearing and reviewing the evidence admitted at trial.⁴⁹

Consequently, the most likely scenario where the United Nations could become a party to an armed conflict would be through any of their peace operations on the field, where for different reasons and circumstances UN forces including PMSCs could become involved in combat against different factions.⁵⁰ It is also important to recall that the simple presence of UN troops in war scenarios does not constitute the Organization as a party to the armed conflict.⁵¹

Nevertheless, the possibility for the UN to be a party to a conflict and therefore be bound by IHL has been denied on several occasions, arguing that those forces represent the international community and by their impartial nature can only be engaged in the restoration and the maintenance of international peace and security.⁵² Ban Ki-moon, the former UN Secretary-General, followed up

43 Dieter Fleck, *The Handbook of International Humanitarian Law* (Michael Bothe (contr) 3rd ed, OUP 2013) 53 (hereinafter *The Handbook of IHL*); Zwanenburg, 'UN and IHL' (n 39) [6]; Tristan Ferraro, 'The applicability and application of international humanitarian law to multinational forces' (2013) 95 (891/892) *International Review of the Red Cross* 561, 564 (hereinafter 'IHL to multinational forces'); Institut de Droit International, 'Conditions of Application of Humanitarian Rules of Armed Conflict to Hostilities in which United Nations Forces may be Engaged' (Zagreb session, 1971) 54(2) article 2,

44 See CAs 2 and 3 GCs for IACs and NIACs respectively.

45 Ferraro, 'IHL to multinational forces' (n 43) 573; Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentaries*, (Louise Doswald-Beck, Robert Kolb (contrs) CUP 2003) 452–457; Fleck, *The Handbook of IHL* (n 43) 44–48; Robert Kolb and Richard Hyde, *An Introduction to the International Law of Armed Conflicts* (Hart Publishing 2008) 75–76; Daphna Shrager, 'UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage' [2000] *American Journal of International Law* 406, 408–409 (hereinafter 'Applicability of IHL'); ILA, 'Final Report on the Meaning of Armed Conflict in International Law' (Hague Conference, 2010) 33 (hereinafter 'Meaning of Armed Conflict'); 'The de jure state or situation of armed conflict depends on the presence of actual and observable facts, in other words, objective criteria.'; ICRC Opinion Paper, 'How is the Term "Armed Conflict" Defined in International Humanitarian Law?' (March 2008) <<https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>> accessed 29 May 2017; 1–2; Zwanenburg, 'UN and IHL' (n 39) [14].

46 ICTR (Trial Chamber I), *The Prosecutor v. Rutaganda*, Case No. ICTR-96–3–T, Judgment and Sentence (6 December 1999) [92 et seq]; ICTY (Trial Chamber II), *Prosecutor v. Limaj et al*, Case No. IT-03–66–T, Judgment (30 November 2005) [90] (hereinafter *Limaj case*): 'the determination of the intensity of a conflict and the organisation of the parties are factual matters which need to be decided in light of the particular evidence and on a case-by-case basis'; ICC (Trial Chamber), *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Judgment (14 March 2012) [533 et seq].

47 See Executive Series, Australian Defence Doctrine Publication 06.4, (2006), chapter 3.5 and the United Kingdom's Joint Service Manual, section 3.3.1 in Ferraro, 'IHL to multinational forces' (n 43) 573.

48 This position is referred to as 'facts on the ground' view.

49 ICTY (Trial Chamber II), *The Prosecutor v. Boškoski*, Case No. IT-04-82–T, Judgment (10 July 2008) [174] (hereinafter *Boškoski case*).

50 Daphna Shrager arguably set up two conditions ('double key' test) that are necessary for the UN to become a party to the armed conflict, 1) the existence of an armed conflict in the area and time of their deployment, and 2) the engagement of the force in the conflict as combatants whether operating under Chapter VI or VII: Daphna Shrager, 'The Applicability of International Humanitarian Law to Peace Operations, from Rejection to Acceptance' (31st Round Table on Current Problems of International Humanitarian Law, International Institute of Humanitarian Law 2009, 94–95 in Ferraro, 'IHL to multinational forces' (n 43) 2.

51 Ferraro, 'IHL to multinational forces' (n 43) 575.

52 See Ferraro, 'IHL to multinational forces' (n 43) 563.

this line in regard to the UN mission in Côte d'Ivoire (UNOCI).⁵³ This reasoning would be flawed in accordance with the aforementioned 'facts on the grounds' view, moreover it seems not to respect the classic distinction between *jus ad bellum* and *jus in bello*. Accordingly, whether the UN has mandated a military operation under chapter VI or VII,⁵⁴ or the legality of such operation would be of little importance as to the determination of an armed conflict.⁵⁵ In the words of the ICTY in *Milutinovic*, 'the existence of an armed conflict does not depend upon the views of the parties to the conflict'.⁵⁶ The denial of the UN to become a party to an armed conflict can only be explained as a result of a profound unfamiliarity with IHL rules, and by other considerations of political and legitimate nature.⁵⁷ In addition, such rejection would amount to a defeat of several purposes of IHL such as the protection of those who do not take part in the hostilities or are placed 'hors de combat'.⁵⁸ Moreover, it clearly clashes with the principle of equality between belligerents,⁵⁹ and would discourage other armed groups to respect the laws of armed conflicts.⁶⁰

Considering CA 2 GCs as having reached customary law status and consequently applicable to IOs, it can be interpreted *mutatis mutandis* that IHL would be applicable whenever there exists an 'armed conflict' between two or more subjects of international law; ie an international armed conflict.⁶¹ However, no definition of the term 'armed conflict' can be found in any IHL provision, and as a result, numerous theories have emerged setting up different thresholds for an international armed conflict to be reached based on the aforementioned 'facts on the grounds' view, among them, the 'first shot theory', where an NIAC would spark off by the mere use of armed force.⁶² A different approach requires a certain degree of intensity in the clashes in order to trigger an IAC and as consequence the application of IHL.⁶³ Despite the fact that the former view is widely accepted for states, the most suitable approach when there are international organizations peace operations involved seems to be the approach requiring a certain degree of intensity in the armed confrontations.⁶⁴ This position is consequently the most adequate for UN peace operations, since

53 Reuters, 'Ban Ki-moon says U.N. not party to I. Coast conflict' (2011) <<http://www.reuters.com/article/uk-ivorycoast-un-ban-idUKTRE73364Z20110404>> accessed 23 July 2017.

54 A UN operation mandated under chapter VII is more likely to be engaged in clashes with other factions, than a peacekeeping operation under chapter VI which typically is not allowed to use force except in self-defence; nevertheless, a chapter VII UN mission should be seen as an indicator not as evidence of a potential armed conflict. See Ferraro, 'IHL to multinational forces' (n 43) 565; and Zwanenburg, 'UN and IHL' (n 39) [15]; Vaios Koutroulis, 'International organisations involved in armed conflict: material and geographical scope of application of international humanitarian law', *International Organizations' Involvement in Peace Operations: Applicable Legal Framework and the Issue of Responsibility* (12th Bruges Colloquium, ICRC-COE 2011) 29, 31 (hereinafter 'IOs involved in armed conflicts').

55 For more information about the distinction between 'jus in bello' and 'ius ad bellum' see Fleck, *The Handbook of IHL* (n 43) 48.

56 ICTY (Trial Chamber), *Prosecutor v. Milutinovic et al*, Case No. IT-05-87-T, Judgment (26 February 2009) [125]. ICTR (Trial Chamber I), *Prosecutor v. Akayesu* (ICTR-96-4-T), Judgment (2 September 1998) [603]

57 Zwanenburg, 'UN and IHL' (n 39) [18].

58 Ferraro, 'IHL to multinational forces' (n 43) 566.

59 Institut de Droit International, 'Conditions of Application of Rules, other than Humanitarian Rules, of Armed Conflict to Hostilities in which United Nations Forces may be Engaged' (Wiesbaden Session, 1975) 56: the Institute declared that UN forces should be bound by the principle of equality between belligerents.

60 Ferraro, 'IHL to multinational forces' (n 43) 569.

61 Ferraro, 'IHL to multinational forces' (n 43) 596.

62 Jean Pictet, *Commentary to the First Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field* (ICRC 1952), 32; ICTY (Appeals Chamber), *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1 (2 October 1995) [70]; Ferraro, 'IHL to multinational forces' (n 43) 575-576.

63 ILA 'Meaning of Armed Conflict' (n 45) 2. See Paul Berman, 'When Does Violence Cross the Armed Conflict Threshold? Current Dilemmas', *Scope of Application of International Humanitarian Law* (13th Bruges Colloquium, ICRC-COE 2012) 41.

64 Christopher Greenwood, 'International Humanitarian Law and United Nations Military Operations' [1998] *Yearbook of International Humanitarian Law* 3, 24.

they enforce their mandate in extremely volatile areas where the chances to be driven into the conflict are extremely high. Thus, for instance, UN troops would be allowed to use force in self-defence should the case arise without automatically constituting the Organization as a party to the armed conflict and therefore a lawful target. Thus, an IAC would take place for an international organization whenever the military engagement between the IO and the governmental forces have attained the required level of severity, as happened with NATO intervention in Kosovo (1993) and more recently in Libya (2011).⁶⁵

When can the UN be considered as a party to a non-international armed conflict and as a consequence be bound by humanitarian rules therein? IHL treaties keep silent about the constitutive elements of an NIAC. Nevertheless, it is generally endorsed that, as derived from CA 3 GCs, a NIAC takes place whenever there is a certain degree of organizational structure of the parties and intensity in the hostilities. Some indicators of the groups' organizational features are the existence of a command structure, its ability to plan and carry out military operations, the control of a certain territory, the ability of the group to respect and ensure respect of IHL, etc.⁶⁶ On the other hand, factors indicating a certain level of intensity are inter alia, the number of fighters, the level of confrontations, the type of weapons used.⁶⁷ It has been claimed that UN troops by their organizational structure already meet the first requirement,⁶⁸ therefore if such is the case as well for the opposition groups, attention should be drawn to whether the involvement of the UN meets the required threshold of intensity.

There are several examples where it can be argued that UN peace-keeping missions have been engaged in violent confrontations of such a level that it could be argued that UN became a party to those armed conflicts. The heavy casualties experienced by the UN Operation in Somalia (UNOSOM) during 1993-1994 of 112 members of its personnel for malicious acts⁶⁹ and the employment of a high degree of force including the use of helicopters and tanks seems to confirm the involvement of the UN as a party to that conflict. However, this affirmation has not been backed by the UN.⁷⁰ Other UN missions can be deemed to have also reached the requisite level of violence. That was the case for the UN Operation in the Congo (ONUC), which in 1961 lost 104 members and which provoked a UNSC resolution condemning such attacks.⁷¹ Equally, the widespread violence between MINUSMA forces and Mali armed groups between 2014-2016 led to 67 casualties on the UN side.⁷²

It has also been suggested by legal writers that a NIAC could be equally triggered through the 'support-based approach'. According to this opinion, UN forces could become a party to the armed conflict when they provide a definite support to one of the parties, as long as '[it] has a direct impact on the opposing party's ability to conduct its military operations' even though they do not enter into direct combat with the armed opposition groups, and therefore the intensity criterion is not met by

65 See Koutroulis, 'IOs involved in armed conflicts' (n 54) 32, 34; Zwanenburg, 'UN and IHL' (n 39) [28]

66 See more in ICTY (Trial Chamber I), *Prosecutor v. Haradinaj et al*, Case No. IT-04-84-T, Judgement (3 April 2008) [60 et seq]; ICTY (Appeals Chamber), *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement (15 July 1999) [561]–[568] (hereinafter *Tadić case*); ICTY, *Limaj case* (n 46) [94–170]; ICTY, *Boškoski case* (n 49) [194]–[206].

67 See more in Fleck, *The Handbook of IHL* (n 43) 49-50; ICTY, *Boškoski case* (n 49) [177]–[193].

68 Ferraro, 'IHL to multinational forces' (n 43) 577.

69 UNPK, 'Fatalities by Mission, Year and Incident Type up to 30 Apr 2017' <http://www.un.org/en/peacekeeping/fatalities/documents/stats_4aapr.pdf> accessed 24 July 2017 (hereinafter 'Fatalities').

70 See Zwanenburg, 'UN and IHL' (n 39) [21].

71 See UNSC Res 169 (29 February 1961) UN Doc S/4741, [2]: To some extent it could be argued that the UN became already by 1960 a party to an armed conflict between the Congolese government and the rebel armed forces via the 'support-based approach'. See UNSC Res 143 (14 July 1960) UN Doc S/4387 [2]. Cf UNSC Res 146 (9 August 1960) UN Doc S/4426, [4].

72 UNPK, 'Fatalities' (n 69).

the UN.⁷³ This approach does not substitute the classic criteria of certain organizational degree and intensity derived *mutatis mutandis* from CA 3 GCs, yet complements it, since a pre-existing NIAC is necessary for it to be applicable.⁷⁴ Subject to this approach, it can be stated that the United Nations was a party to an NIAC against certain armed groups, due to the support given by the MONUC to the Congolese Government during the military operations undertaken in the Democratic Republic of the Congo.⁷⁵

There is legal literature arguing that when an entity with international legal personality such as the UN intervenes in an ongoing NIAC against non-state armed groups, the armed conflict becomes international, ie, the intervention of the Organization 'internationalizes' the conflict. This position is not widely supported, besides, the most adequate reasoning is that the NIAC maintains its existence.⁷⁶

According to the arguments exposed in this subsection, the rules of international humanitarian law are applicable to the United Nations, even during peace operations, and consequently the Organization can be constituted into a party to an armed conflict, that depending on its nature and the parties involved can be an IAC or NIAC, should the required thresholds are met as observed from the examples proposed. Denying the aforementioned would amount to a rejection of the generally accepted fact-based approach, a defeat of the object and purposes of IHL, the principle of equality between belligerents, and the separation between *ius in bello* and *ius ad bellum*.

3. Is IHL applicable to the UN according to UN practice and documents?

In the previous subsection, we confirmed the application of IHL to UN forces according to customary international law, and the different sets of rules applicable in case of IAC and NIAC. However, there are certain UN documents and conventions related to IHL that shed some light over the UN position on the matter. Thus, in this subsection, we will analyse the role of such documents for the application of international humanitarian law to the United Nations.

The first time it can be interpreted that the UN committed itself to respect IHL in the conduct of hostilities goes back to the Regulations of the first UN peacekeeping force (UNEF I) in 1956, where it was stated that '[t]he [UN] Force shall observe the principles and spirit of the general international Conventions applicable to the conduct of military personnel'.⁷⁷ This formula is commonly known as the 'principles and spirit clause'. Although the terms used were somewhat imprecise, there is no doubt that the intention of the UN was not to leave the military conduct of UNEF forces unconstrained. Since IHL is the main body of law restricting the parties' military actions in an armed conflict, it shall be understood that in those Regulations the UN intended to make certain IHL rules applicable to UNEF troops. The UN included the same provision in other peacekeeping

73 Zwanenburg, 'UN and IHL' (n 39) [14]; Cf Ferraro, 'IHL to multinational forces' (n 43) 583-584.

74 Zwanenburg, 'UN and IHL' (n 39) [14]

75 UNSC Res 1906 (23 December 2009) UN Doc S/RES/1906 [21-23]; UNSC Res 1925 (28 May 2010) UN Doc S/RES/1925 [12(h)]; UNSC Res 2098 (28 March 2013) UN Doc S/RES/2098 [12(b)].

76 Zwanenburg, 'UN and IHL' (n 39) [18]; Ferraro, 'IHL to multinational forces' (n 43) 596. Cf Daphna Shrager, 'The United Nations as an Actor Bound by International Humanitarian Law' (1998) 5 *International Peacekeeping* 65, 73. See more information about the different positions on the matter in Koutroulis, 'IOs involved in armed conflicts' (n 54) 29-35.

77 S-G's Bulletin, 'Regulations for the United Nations Emergency Force' (7 February 1957) ST/SGB/UNEF/1, [44].

regulations, such as those of ONUC in 1963,⁷⁸ and of UN Force in Cyprus (UNFICYP) a year later.⁷⁹

In 1991 the UN S-G submitted to the General Assembly the Model Agreement between the UN and the member states contributing personnel and equipment to the United Nations peacekeeping operations.⁸⁰ In its article 28, after using almost the same wording employed in the aforementioned Regulations, it continues asserting that

[t]he international conventions referred ... include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the event of armed conflict.

This provision could be interpreted as strong evidence of the commitment of the UN towards the application of IHL to its peacekeeping operations.

Later on, in the 1993 Status of the Force Agreement between the UN and the Rwandan state regarding the United Nations Assistance Mission for Rwanda (UNAMIR), it was unequivocal that the UN committed itself to respect IHL by using once again the so called 'principles and spirit' clause in article 7(a).⁸¹ The same provision was added to other subsequent SOFA agreements.⁸²

The Convention on the Safety of United Nations and Associated Personnel was adopted by the General Assembly in 1994.⁸³ This international agreement is intended to prevent attacks committed against United Nations and associated personnel and punish their perpetrators. However, according to its article 2 the Safety Convention is not applicable to UN personnel and therefore they may become the object of attacks when three cumulative requirements are met: 1) that the UN mission in which they are involved has been authorized by the SC under chapter VII, 2) when any of the personnel are engaged as combatants, and 3) when IHL is applicable. This provision is heavily questionable since apart from not using very clear terms, they are also contradictory. Besides, attending to the wording employed, the first requirement makes the legality of attacks on UN personnel subject to the decision of the SC. This condition seems to collide with the traditional 'facts on the ground' approach as triggering IHL, the distinction between 'jus ad bellum' and 'ius in bello', and the principle of belligerent equality.⁸⁴ However, interpreting article 2 in its context, and specially with the safety clause embodied in article 20(a) which exposes that '[n]othing in this Convention shall affect ... [t]he responsibility of such (UN) personnel to respect such law and standards (IHL and human rights law)' seems to allow the application of IHL to UN troops when they become a party to an armed conflict and therefore they can be legally targeted.⁸⁵

The frictions that may arise between the 1994 Safety Convention and IHL appear to be reduced due to limited amount of states parties to it.⁸⁶ Moreover, all the doubts regarding the imprecise article 2 were definitely cleared up with the entry into force of the Rome Statute of the International

78 S-G's Bulletin, 'Regulations for the United Nations Force in the Congo' (15 July 1963) ST/SGB/ONUC/1, [43].

79 S-G's Bulletin, 'Regulations for the United Nations Force in Cyprus' (25 April 1964) ST/SGB/UNFICYP/1, [40].

80 Report of the S-G, 'Model Agreement between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-keeping Operations' (23 May 1991) UN Doc A/46/185.

81 See Agreement on the Status of the United Nations Assistance Mission for Rwanda (UN-Rwanda) (adopted 5 November 1993) 1748 UNTS, 3 article 7(a).

82 See others in Shraga, 'Applicability of IHL' (n 45) 407.

83 Convention on the Safety of United Nations and Associated Personnel (adopted 9 December 1994) 2051 UNTS 419 (hereinafter Safety Convention).

84 See Zwanenburg, 'UN and IHL' (n 39) [20]; Ferraro, 'IHL to multinational forces' (n 43) 570-572.

85 See Zwanenburg, 'UN and IHL' (n 39) [9].

86 Up to 24 July 2017 the Safety Convention counts with 93 states parties:

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-8&chapter=18&clang=en>.

Criminal Court in 2002. Its article 8(2)(b)(III) and (e)(III) classifies as war crime, among others:

[i]ntentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

This provision confirms the legality of the attack on UN troops only when it is permitted by the rules of international humanitarian law.⁸⁷ Namely, when the UN can be considered as a party to the conflict, and therefore its troops as combatants, or when considered as civilians they take certain part in the hostilities.

In 1999 the UN S-G published the Bulletin on the Observance by the United Nations Forces of International Humanitarian Law, in which it claimed as applicable to UN troops many of the IHL rules that are considered to have reached customary nature.⁸⁸ In particular, Section 1(1) declares that:

[t]he fundamental principles and rules of international humanitarian law set out in the present bulletin (which are not an exhaustive list) are applicable to United Nations forces [under UN command and control] when in situations of armed conflict they are *actively engaged therein as combatants, to the extent and for the duration of their engagement*. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.⁸⁹

This provision, although ambiguous, should be interpreted as enabling the application of IHL to UN forces whenever and for such time the Organization can be considered as a party to an armed conflict;⁹⁰ and accordingly, in order to ascertain the participation of the Organization in an armed conflict, recourse to IHL rules will be necessary. Contrarily, it has been argued that in Section 1(1) the UN intended to make IHL applicable to its troops for such time as they take a direct part in hostilities, equating then in such circumstances the status of combatant to the one of civilian without general protection from attack.⁹¹ Such interpretation would be inconsistent with IHL rules since the qualification of a faction as a party to the conflict, and by consequence its members as combatants, is relatively stable over the time and cannot cease with the ending of each military strike. The former interpretation, apart from seeming the most accurate, it is not in contradiction with section 3 of the Bulletin where it declares that

[i]n the status-of-forces agreement ... the United Nations undertakes to ensure that the force shall conduct its operations with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel.

However, the sole presence of UN military forces in the front line does not transform the Organization per se into a party to the conflict, for that to happen, according to IHL, the hostilities between the UN and other armed groups must attain certain degree of intensity as discussed in the previous subsection of this work.

After all, which value does the 1999 S-G Bulletin enjoy on the international legal plane? On the one

87 Ferraro also upheld this interpretation: Ferraro, 'IHL to multinational forces' (n 43) 572.

88 S-G's Bulletin, 'Observance by the United Nations Forces of International Humanitarian Law' (6 August 1999) UN Doc ST/SGB/1999/13. See ICRC, 'ICRC CIHL' (n 40).

89 Emphasis added.

90 Marten Zwanenburg also subscribe to that interpretation: Zwanenburg, 'UN and IHL' (n 39) [14].

91 'It has been argued that multinational forces drawn into an armed conflict would be bound by IHL only for such time as they are directly participating in hostilities': Ferraro, 'IHL to multinational forces' (n 43) 604. For Dieter Fleck an international organization will be considered a party to an armed conflict 'as a general rule ... as for such time as, military personnel take direct part in the hostilities': Fleck, *The Handbook of IHL* (n 43) 53-54.

hand, it can be argued that such document can be equated to a state unilateral declaration, on the other hand, it can be considered as a mere internal regulation only binding upon UN personnel.⁹² Despite the divergence of views on the matter, IHL rest applicable to the UN via customary law as declared in the preceding subsection, and therefore would prevail over the 1999 S-G Bulletin in case of discordance.

In this subsection, recourse have been made to the most relevant documents regarding the applicability of IHL to the UN, and despite the ambiguous terms employed in some of them, it can be ascertained that the UN accepts the application of IHL in its peace operations when the intensity of the confrontations has reached the required level to make the UN party to the armed conflict. Moreover, this view seems to be in accordance with the applicability of IHL as customary law to the United Nations.

4. Attribution of conduct to the UN as triggering its participation in an armed conflict.

As we asserted in section 1.2 of this chapter IHL shall be applicable on a factual basis and disregarding other legal considerations of 'ius ad bellum' such as whether, in the case of the UN, a peacekeeping operation has been mandated to use force under chapter VII or not. Therefore, the UN would qualify as a party to the conflict and IHL would be triggered according to its own acts.

The fundamental question that arises then is, whose acts and under which circumstances can be attributed to the Organization for the purpose of considering it as a party to an armed conflict? Recourse to the rules of general international law on attribution of acts is necessary since IHL provisions do not shed light on the matter.⁹³ However, a second problem arises due to the numerous and diverse control tests, for the purpose of attribution of conducts to subjects of international law, as expressed by several courts, institutions, and legal scholars that will analyse in the following part of this chapter.

Accordingly, the attribution of conduct is not only essential for the purpose of determining whether an armed conflict exists and therefore IHL is applicable, but also and subsequently, in order to determine in case of breach of an IHL provisions, whether any of the parties to the conflict can be held accountable.⁹⁴ We will study in the following chapter the most relevant theories regarding attribution of conduct on the legal plane knowing that although it will be focused on the responsibility matters, they can be equally applied to ascertain whether the Organization can be regarded as a party to an armed conflict.

92 See Shrager 'Applicability of IHL' (n 45) 409; Zwanenburg, 'UN and IHL' (n 39) [12].

93 See ICTY, Tadić case (n 66) [98], [105].

94 See Marten Zwanenburg, 'International Organisations vs Troops Contributing Countries: Which Should be Considered as the Party to an Armed Conflict during Peace Operations?', *International Organizations' Involvement in Peace Operations: Applicable Legal Framework and the Issue of Responsibility* (12th Bruges Colloquium, ICRC-COE 2011) 21, 26 (hereinafter 'IOs vs TCCs').

Section 2: Attribution of PMSCs' conduct to the UN as element of its institutional responsibility.

The breach of an international obligation by a state or international organization together with its attribution are essential elements in order to establish its international responsibility according to the ILC.⁹⁵ Consequently, a second obligation is born, constraining such entities to repair the damage caused by the violation of the previous obligation. Thus, the attribution of conduct is of vital importance as to the determination of institutional responsibility to an IO like the United Nations for violations of IHL rules. The aim of this section is to study the most accredited theories and UN practice on the matter, in order to determine whether the misconducts of PMSCs providing services to UN peace operations can be attributed to the UN with the purpose of holding the Organization accountable, although we will also expressly deal in certain instances with the application of IHL through those theories.

As we asserted in section 1.1 of this chapter, the international legal personality of the United Nations was recognised by the ICJ in *Reparation for Injuries* opinion, which means that it is an international legal person 'capable of possessing international rights and duties'.⁹⁶ And what is the nature of those international duties? Generally, international obligations can be classified into two groups, primary or secondary obligations, the latter stemming from the breaching of the formers.⁹⁷ Moreover, as already contended in the aforementioned section, IHL can be applicable to the UN (as primary obligation), therefore, any breach of those obligations would logically trigger the international responsibility of the Organization and the obligation to repair the grievance caused. However, the responsibility of international organizations under customary law is considered less established than that of states.⁹⁸

Since 1948 the UN has established more than 71 peacekeeping missions and 100,000 uniformed personnel have participated therein as troops, police and military observers.⁹⁹ Taking into account the magnitude of such numbers, it seems astonishing that there is not yet abundant case law declaring its responsibility for UN international wrongdoings. The explanation for that is to be found in article 105(1) of the UN Charter¹⁰⁰ and in article 2, section 2, of the Convention on the Privileges and Immunities of the United Nations (CPIUN)¹⁰¹ where it has been argued that the Organization is conferred absolute immunity from legal process from national courts.¹⁰²

95 See articles 1-2 of ILC, 'Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/49 (hereinafter ARS); and articles 3-4 DARIO.

96 ICJ, (n 30) *Reparations for Injuries* opinion, 9. See more about the international legal personality of the United Nations in section 1.1 of this chapter.

97 ARS Commentaries 31.

98 White, 'Institutional responsibility' (n 9) 387; Seiberth, *PMSCs in International Law* (n 3) 120; Lehnardt, 'Peacekeeping' (n 3) 210.

99 See more statistical details from the creation of the United Nations in: Peace and Security Section of the United Nations Department of Public Information, 'United Nations Peacekeeping Operations: Fact Sheet' (30 June 2017) UN Doc DPI/1634/Rev.194 <<http://www.un.org/en/peacekeeping/documents/bnotelatest.pdf>> accessed 24 July 2017.

100 See Charter of the United Nations (adopted 26 June 1945) (hereinafter UN Charter) article 105(1).

101 See Convention on the Privileges and Immunities of the United Nations (adopted 13 February 1949) 1 UNTS 15, article 2, section 2.

102 Southern District of New York (Second Circuit) *Delama Georges et al, v. United Nations et al*, (27 May 2015 2015) No. 15-455-cv, 11-13; US Court of Appeals (Second Circuit), *Brzak et al v. United Nations et al* (2 March 2010) No. 08-2799-cv, 6 et seq. *Stichting Mothers of Srebrenica et al v. The Netherlands* decision (dec.), no. 65542/12, Reports of Judgments and Decisions 2013 (extracts) [146]- [155]; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999, p. 62 [56] (hereinafter Immunity opinion).

As we viewed in chapter 2, there are two common ways in which PMSCs can provide their services in UN peacekeeping missions, either being hired by the troop contributing nations (TCNs) and sent to the operation as part of their own national contingents, or being directly engaged by a UN mission. The former case may raise more issues of attribution since it may be argued that the conduct of PMSCs can be attributed to the TCN, the IO, or both.¹⁰³ In the latter situation, it seems clear that if there is an international person to attribute military companies' acts, that is the United Nations. However, if none of the aforementioned entities can be held accountable, a further possibility to repair the damaged caused by the wrongful act could lay on international corporate responsibility by holding the company accountable for breaches of public international law; nevertheless, that analysis lies outside the scope of this paper since it is consacrated to research the different situations in which the United Nations could be deemed as internationally responsible.

1. The 'effective control' test

It has been argued that one of the most accepted tests of attribution of conduct for a subject of international law is the 'effective control' test.¹⁰⁴ Although there are several views on what constitutes being in effective control of a given conduct, in this subsection we will study the most relevant positions on the matter with the purpose of imputing PMSCs' misbehaviours to the United Nations knowing that it would be equally applicable to declare the Organization as a party to an armed conflict.

In 1986, for first time, the ICJ presented its 'effective control' test in the case of the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States).¹⁰⁵ More recently, the Court confirmed it in 2007 with the case Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)¹⁰⁶. According to it, in order to attribute a given conduct to a state, it is not necessary that the persons whose conduct is under scrutiny have a 'complete dependence' on the state, however,

it has to be proved that they acted in accordance with that state's instructions or under its 'effective control' ... in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions.¹⁰⁷

In the Nicaragua case, the ICJ found that the United States was greatly involved in numerous military or paramilitary operations carried out in the territory of Nicaragua by the contras.¹⁰⁸ Moreover, the Court not only deemed as a fully established fact the financial assistance by the United States of such militaristic activities,¹⁰⁹ but also that the US government considerably

103 Lehnardt, 'Peacekeeping' (n 3) 205, 208, 214-215; White, 'Institutional responsibility' (n 9) 387; Giorgio Gaja, 'Second Report on Responsibility of International Organizations' (2004) UN Doc A/CN.4/541 [6]-[7] (hereinafter 'Second Report').

104 At least for Nigel White in the context attribution of conduct to states, the 'effective control' test is the most relevant, and would be met when the government is in effective control of a given conduct: White, 'Institutional responsibility' (n 9) 381, 390.

105 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) Merits, Judgment. ICJ Reports 1986, p. 14, [115] (hereinafter Nicaragua case).

106 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007, p. 43 (hereinafter Genocide case).

107 Ibid [400]. See also critics to the 'overall control' test from the ICTY in Tadić case (n 66) [402]-[406].

108 ICJ, Nicaragua case (n 105) [106].

109 ICJ, Nicaragua case (n 105) [107].

organized, provided training and equipment (to such an extent as to include the supply of an aircraft),¹¹⁰ chose military targets and planned the 'whole of its operations' to that armed group.¹¹¹ Despite the assertion of all these forms of support, the 'general control' exercised by the US on the *contras* and the 'high degree of dependency' of the latter over the former, the Court claimed that it was not possible to attribute to the United States the alleged acts contrary to human rights and humanitarian law as contended by Nicaragua, since it was not proved that the US 'directed or enforced the perpetration of [such acts]' which could have been committed by the *contras* without the control of the of the United States'. Notwithstanding, according to the ICJ, the international responsibility of the US would have been triggered if it had been proved that the US had exercised effective control over the military operations that led to the alleged violations.¹¹²

One of the issues that the International Court of Justice had to decide in the Genocide case was whether the acts committed in Srebrenica by a Bosnian Serb paramilitary group, which could not be equated to an organ of the Federal Republic of Yugoslavia,¹¹³ was still attributable to the FRY on the basis of the alleged instructions, direction and control over the perpetrators by that state. The Court found that despite the existence of some evidence indicating that the FRY exercised certain influence over the authorities of the Army of Republika Srpska, the acts committed in Srebrenica cannot be attributed to FRY on account of the 'effective control' test,¹¹⁴ indeed the Bosnian Serbs leaders withhold 'some qualified, but real, margin of independence'.¹¹⁵

The ILC has also subscribed to the 'effective control' test as it is clear from article 8 of the Articles of State Responsibility¹¹⁶ which according to the ICJ has reached status of customary international law.¹¹⁷ Accordingly, for the ILC and several legal scholars the determinant factor is not whether an entity author of the conduct has been recognised by the state as its own organ, but rather whether there is a 'specific factual relationship' between the State and that entity.¹¹⁸ Besides, the travaux préparatoires of article 8¹¹⁹ and the ILC Commentaries on ARS¹²⁰ confirm that it is intended to trigger international responsibility for private actors' conducts. Moreover, the terms 'instructions', 'direction' and 'control' are disjunctive, and accordingly, the sole existence of one of them over a given conduct would trigger its attribution to the state.¹²¹

Although the ILC do not clarify the meaning of the expression 'instructions', attending to its ordinary meaning in its context, it can interpret as a synonym of 'order' or 'command'. Examples of this include

110 ICJ, Nicaragua case (n 105) [106], [108].

111 ICJ, Nicaragua case (n 105) [102], [115].

112 ICJ, Nicaragua case (n 105) [115].

113 ICJ, Genocide case (n 106) [394]-[395].

114 ICJ, Genocide case (n 106) [408] -[412].

115 ICJ, Genocide case (n 106) [394].

116 Article 8 ILC, 'Draft articles on Responsibility of States for Internationally Wrongful Acts' (2001) A/56/49 (hereinafter ARS)

117 ICJ, Genocide case (n 106) [406]. Contrarily, the ICTY Appeals Chamber declared that 'the "effective control" test propounded by the International Court of Justice ... is at *variance with international judicial and State practice*': ICTY, Tadić case (n 66) [124]. Emphasis added. Antonio Cassese also criticise the ICJ asserting that '[t]he Court's basic assumption, that Article 8 of the ILC Articles reflects customary law, is undemonstrated, being simply predicated on the authority of the Court itself ... as well as the authority of the ILC: Antonio Cassese, 'The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgement on Genocide in Bosnia' [2007] The European Journal of International Law 649, 650-651 (hereinafter 'The Nicaragua and Tadić Tests').

118 Commentary ARS, article 8: [1]. Zwanenburg, 'IOs vs TCCs' (n 94) 25, 26. See other authors in Lehnardt, 'Peacekeeping' (n 3) 214.

119 LC Yearbook (1956) II, 264. Antenor Hallo de Wolf, *Reconciling Privatization with Human Rights* (Intersentia 2011) 224 (hereinafter *Reconciling Privatization*)

120 Commentary ARS, article 8: [2], [9].

121 Commentary ARS, article 8: [7].

individuals or groups of private individuals who, though not specifically commissioned by the State and not forming part of its police or armed forces, are employed as auxiliaries or are sent as “volunteers” to neighbouring countries, or who are instructed to carry out particular missions abroad.¹²²

Therefore, international responsibility will arise when such person or persons have been instructed to carry out a particular task when the task itself represent an internationally wrongful act. On the other hand, the state responsibility will be engaged on account of its 'direction or control' when

it directed or controlled the specific operation and the conduct complained of was an integral part of that operation. The principle does not extend to conduct which was only incidentally or peripherally associated with an operation and which escaped from the State's direction or control.¹²³

The Commission also argues that it is widely accepted in international jurisprudence to attribute conducts of person or persons to states as long as they are authorized by them.¹²⁴ In consequence, and according to the views exposed by ILC over the 'effective control' test, the application of such degree of control to PMSCs seems perfectly plausible.

The Montreux document,¹²⁵ adopted on 17 September 2008 by initiative of Switzerland and the ICRC, is one of the most relevant documents regarding among others the applicability of international humanitarian law and human rights to PMSCs when operating in zones of armed conflict. This instrument endorses the 'effective control' test for the purpose of attributing PMSCs' violations of international law to contracting states.¹²⁶ However, it is important to highlight that the Montreux document is a non-binding instrument, and only supported by 54 states and 3 international organizations.¹²⁷

In contrast to the aforementioned positions, the ICTY Appeals Chamber in the Tadić case denies the automatic application of the 'effective control' test in all circumstances; nevertheless, the Tribunal restricts its application only to three specific cases. The first one is when a 'private individual' has been mandated by a state in order to carry out certain unlawful acts in another state such as 'kidnapping a State official, murdering a dignitary or a high-ranking State official, blowing up a power station or, especially in times of war, carrying out acts of sabotage'. The second, when an 'unorganized group of individuals' performs acts regarded as incompatible with international law. Thirdly, when a state engages a 'private individual or group of individuals' to perform lawful tasks on its behalf and while doing so those subjects contravene international rules binding upon the state.¹²⁸

Although the 'effective control' test was intended to apply in instances of attribution of conduct to states, it also seems to be accepted nowadays to be applicable to other international legal persons such as international organizations.¹²⁹ Certainly, the ILC recognizes its application to IOs at least for

122 Commentary ARS, article 8: [2]

123 Commentary ARS, article 8: [3]. Following this line the ILC also argues that 'where persons or groups have committed acts under the effective control of a State, the condition for attribution will still be met even if particular instructions may have been ignored': Commentary ARS, article 8: [8].

124 Commentary ARS, article 8: [2].

125 The Montreux Document (adopted 17 September 2008),
<https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/voelkerrecht/Montreux-Broschuere_en.pdf> accessed 8 July 2017.

126 Ibid part 1,A,7)

127 See up-to-date list of participating states and IOs on the official web of the Swiss Federal Department of Foreign Affairs <<https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html>> last accessed 8 July 2017.

128 ICTY, Tadić case (n 66) [118]-[119].

129 White, 'Institutional responsibility' (n 9) 390; Kjetil Larse, 'Attribution of Conduct in Peace Operations: the "Ultimate Authority and Control" Test' [2008] The European Journal of International Law 509, 531; Seiberth,

the purpose of article 7 DARIO.¹³⁰ Moreover, according to legal scholars such as Marten Zwanenburg the 'effective control' test is of high importance for the determination of institutional responsibility of an IO undertaking peace operations since it has been quite extended practice that IOs are officially in control, but it is, in reality, the TCNs which exert it.¹³¹

International organizations like the UN do not have their own standing armies. Accordingly, they depend on the forces provided by TCNs and, with steady increase, by PMSCs for military purposes.¹³² Nigel White argues that although IOs would possess some degree of control over them, it is not realistic to consider that they will be in 'fully effective control' over their misconducts.¹³³ Antenor Hallo de Wolf considers as 'regrettable' the fact that the Court decided to attach itself to such 'strict and limited' view.¹³⁴ In fact, the 'effective control' test would prevent applying IHL and holding IOs accountable in most scenarios¹³⁵ since it requires entities with international personality to undertake one of the following actions:

- give *instructions* guiding the perpetration of unlawful acts, or
- *direct* the commission of the misconduct, or
- *control* the execution of the wrongdoing, or
- *authorize* the perpetration of unlawful acts.

Can the United Nations be in position of effective control over PMSCs hired directly by the Organization through its contractual link? The UN, for security and other political reasons, does not publish much information related to the contracts between the Organization and private military companies.¹³⁶ However, as stated in chapter 2, there exists evidence that such companies have been employed by the UN during peacekeeping operations to perform several tasks such as static guarding, logistic support, demining and the explosive ordnance disposal, furthermore, the name of several PMSCs appears in the list of service providers to the UN.¹³⁷ If we aim to analyse whether a certain act committed by such companies can be attributed to the United Nations in regard to the 'effective control' test, the terms of the contract could be of great importance as to ascertain whether the Organization instructed or authorized a given conduct. In contrast, it does not appear to be very useful to whether the UN directed or controlled it. In any case, the terms of the contract would not be an exclusive source of evidence for the attribution of conduct since the 'effective control' must be established on factual basis, therefore attention should always be drawn to other factual indicators that confirm that the Organization was in such degree of control.

PMSCs in International Law (n 3) 102.

130 Differently Paolo Palchetti argues that the 'effective control' test found in article 7 DARIO is not analogous to the article 8 ARS: Paolo Palchetti, 'How can Member States be Held Responsible for Wrongful Actions Committed during Peace Operations Conducted by International Organisations?' *International Organizations' Involvement in Peace Operations: Applicable Legal Framework and the Issue of Responsibility* (12th Bruges Colloquium, ICRC-COE 2011) 96, 100.

131 Zwanenburg, 'IOs vs TCCs' (n 94) 25-26.

132 White, 'Institutional responsibility' (n 9) 393.

133 White, 'Institutional responsibility' (n 9) 391-392.

134 Hallo de Wolf, *Reconciling Privatization* (n 119) 227. The same author also argues that the '[effective control] approach has been criticized since it makes it quite difficult to attribute the conduct of private actors whose acts are substantially shaped or facilitates by the State to the State under [a]rticle 8': Hallo de Wolf, *Reconciling Privatization* (n 119) 226.

135 White, 'Institutional responsibility' (n 9) 383, 391; Seiberth, *PMSCs in International Law* (n 3) 120.

136 Østensen, 'UN Use of PMSCs' (n 13) 7-8.

137 See chapter 2 for more detailed instances where the United Nations has contracted the services of PMSCs.

Peacekeeping practice has shown cases of the deployment of PMSCs by troop contributing states instead of their own personnel. The United States is an example of this since it has been confirmed on certain occasions that it furnished the UN with contractors such as DynCorp and PAE.¹³⁸ This put, it is evident that the question of attribution of conduct becomes somewhat more complicated since in those cases the security companies not only possess legal ties with the UN, as part of a national contingent but also to the TCN itself, through at least a contractual relationship. Supposing that an international unlawful act is committed by a private military company, the conduct could be perfectly attributed to both entities with international legal personality, ie the UN and the TCN. If we apply the Nicaragua test to that situation, a fundamental question arises: which of the two international persons was in effective control? To make such determination, it is necessary to provide answers, as we studied above, to other matters, namely, which entity issued the instructions guiding the commission of, authorized, directed or controlled the misconduct? In the case where only one of the international subjects is engaged in one of those actions, it is clear that the conduct will be attributed to it and consequently will be held internationally responsible. However, due to the particular relation between both entities and the PMSC, it does not seem absolutely improbable that while one can give instructions relating to an operation, the other may be in charge of controlling its execution, in such situation, both the United Nations and the TCN would be responsible under the 'effective control' test.¹³⁹

Should the 'effective control' test be applied to IOs, it would make it very difficult, although not impossible, to hold the United Nations responsible under international law for violations of IHL committed by PMSC, either directly hired by the Organization or provided by a TCN in support of a peacekeeping operation. The degree of implication required over a specific conduct is of such an extent that it is unlikely that the United Nations would reach it. It is interesting to point out that the responsibility of the United Nations is likelier to arise for its failures to act rather than by their actions. An example of this is its failure to comply with the *ius cogens* norm to prevent genocide as occurred in Srebrenica or Rwanda.¹⁴⁰ Consequently, for the purpose of attribution to the United Nations of responsibility for violations of international humanitarian law perpetrated by PMSCs, unless they are effectively attributed to another entity of international law, or the company can be held responsible under corporate responsibility, the grievances caused by such breaches are very likely to remain unrepaired.

2. The 'overall control' test.

In the Tadić case, the ICTY Appeals Chamber while stating that only in certain situations a high degree of control is required to attribute acts of individuals to states,¹⁴¹ however, declared that a less stringent test, that is to say, the 'overall control' test, is needed when 'individuals making up an organised and hierarchically structured group, such as military unit[s] or, in case of war or civil strife, armed bands of irregulars or rebels', since normally those groups possess certain particularities such as a 'structure, a chain of command ... a set of rules as well as ... symbols of

138 See Lehnardt, 'Peacekeeping' (n 3) 208.

139 A dual attribution of conducts under the 'effective control' test seems perfectly possible when two subjects of international law undertake any of the actions that equate to be in such degree of control. However the ICJ has not envisaged in the Nicaragua nor in the Genocide cases the possibility of attributing conduct to two international persons.

140 See Gaja (n 32) 'Third Report' 4.

141 See above subsection.

authority' and usually members of the group act in accordance to the norms and the authority of the leader of the group.¹⁴² From that assertion, there is nothing that impedes regarding private military and security companies as military or paramilitary groups and hence the attribution of their conduct would require the application of the 'overall control' test. Notwithstanding, in which situations can it be considered that a state exercises 'overall control'? According to the Tribunal, when the state apart from equipping and financing the groups also

- coordinates, or
- assists in the 'general planning of its military activity'.¹⁴³

In consequence, according to this control test a state can be held internationally accountable for acts committed by such groups regardless of *'whether or not each of them was specifically imposed, requested or directed by the State'* or even in contravention of its instructions.¹⁴⁴

Following this reasoning, the ICTY claimed that the acts committed by the Bosnian Serb army were attributable to and therefore triggered the international responsibility of the Former Republic of Yugoslavia on account of the 'overall control' test, since it was proved that the FRY not only provided financial and logistical support but also participated in the 'general direction, coordination and supervision' of the military activities and operations of the Republika Srpska.¹⁴⁵ Moreover the Tribunal held that applying a more strict threshold requiring to prove that each of the wrongful actions were committed under FRY's control or instructions would amount to an application of the wrong test.¹⁴⁶

The ICTY went further and affirmed that state and judicial practice has supported the application of the 'overall control' test in relation to military or paramilitary groups,¹⁴⁷ what can be equated to claim that there is state practice and *opinio iuris*, ie customary international law.

The Tadić control test wrought the strong criticism of the International Court of Justice, which considered that the ICTY exceeded its jurisdiction¹⁴⁸. Moreover, the ICJ did not regard such a control test as persuasive¹⁴⁹ since

[it] has the major drawback of broadening the scope of State responsibility well beyond the fundamental principle governing the law of international responsibility: a State is responsible only for its own conduct, that is to say the conduct of persons acting, on whatever basis, on its behalf ... [T]he "overall control" test is unsuitable, for it stretches too far, almost to breaking point, the connection which must exist between the conduct of a State's organs and its international responsibility.¹⁵⁰

Despite that, at least for the purpose of determining the nature of an armed conflict, that is to say, either internal or international depending on the parties involved, the ICJ estimates that the 'overall control' test may be 'applicable and suitable'.¹⁵¹ Moreover, the Court arguably stated that for a matter of 'logic' the same control test should not be applied for the aforementioned purpose and for the

142 ICTY, Tadić case (n 66) [120].

143 ICTY, Tadić case (n 66) [131], [138]

144 ICTY, Tadić case (n 66) [121]-[122], [131].

145 ICTY, Tadić case (n 66) [156]

146 ICTY, Tadić case (n 66) [153]; ICJ, Genocide case (n 106) [402].

147 ICTY, Tadić case (n 66) [124]. See specific instances of state practices in fn 167 of the decision.

148 ICJ, Genocide case (n 106) [403]

149 ICJ, Genocide case (n 106) [404].

150 ICJ, Genocide case (n 106) [406].

151 ICJ, Genocide case (n 106) [404]. See Ferraro, 'IHL to multinational forces' (n 43) 592.

attribution of international responsibility since the two aspects are 'very different in nature'.¹⁵² Nevertheless, that affirmation has been rightfully contended by several legal scholars, claiming that it is consistent with the logic of international law to apply the same test for which is in nature the same procedure of linking a given conduct to a legal subject even if it is in different branches of international law.¹⁵³ As consequence, the arguments against the application of the same control test for determining the parties implicated in an armed conflict and the attribution of conduct seem to be unconvincing.

Several international tribunals embraced the use of this less rigorous degree of control. The ECtHR in *Loizidou v. Turkey*¹⁵⁴ had to resolve the issue of whether the ECHR was applicable to the territories of northern Cyprus and Turkey was responsible in relation to the continuous denial of the applicant's access to her property in northern Cyprus and the ensuing loss of all control over the property. Although the Republic of Turkey contested the jurisdiction of the Court by affirming that the TRNC (Turkish Republic of Northern Cyprus) is a 'democratic', 'constitutional' and 'politically independent of all other sovereign states including Turkey and that the 'Turkish forces in northern Cyprus are there for the protection of the Turkish Cypriots and with the consent of the ruling authority of the "TRNC" ', the Court asserted that in order to hold the Republic of Turkey internationally responsible:

It is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the 'TRNC'. It is obvious from the large number of troops engaged in active duties in northern Cyprus ... that her army exercises *effective overall control* over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the 'TRNC' ... Those affected by such policies or actions therefore come within the 'jurisdiction' of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus.¹⁵⁵

According to this reasoning, in *Loizidou v. Turkey* the ECtHR employed what it coined as 'effective overall control' test, which despite its ambiguous terms remains in essence very similar to the aforementioned ICTY Appeals Chamber test. This is because it did not consider necessary to exercise control, direct, instruct or authorized the relevant authorities over each of the misconducts in order to engage the state responsibility. However, the main difference with the *Tadić* control test seems to be that while the latter was exclusively designed to engage international responsibility for military or paramilitary groups' conducts, the ECtHR widened its scope at least to include local authorities which survive with the support of a state, even if they officially do not pertain to that given state. The ECtHR confirmed the same degree of control in *Cyprus v. Turkey* when it stated that

[Turkey] [h]aving *effective overall control* over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's 'jurisdiction' must be considered to extend to securing the entire range of substantive rights set out in the Convention ...¹⁵⁶

Special attention should be paid to the fact that the ECtHR does not hesitate to apply the same control test for two different purposes: first, to ascertain whether the European Convention applies

152 ICJ, *Genocide case* (n 106) [405].

153 Zwanenburg, 'IOs vs TCCs' (n 94) 25, 26. Cassese, 'The Nicaragua and *Tadić* Tests' (n 116) 650-651.

154 ECtHR, *Loizidou v. Turkey* (merits), (18 December 1996) Reports of Judgments and Decisions 1996-VI (hereinafter *Loizidou case*)

155 Ibid [56]

156 ECtHR, *Cyprus v. Turkey* [GC], no. 25781/94, Reports of Judgments and Decisions 2001-IV, [77].

to certain territories as a consequence of the control exercised therein by a contracting party; and second, to establish its international responsibility for human rights violations in such territories. The logic behind this operation is to establish, under a common control test, the applicability of a branch of international law and the responsibility of a subject of international law for its breaches. Consequently, nothing seems to prevent drawing an analogy for the application of the same degree of control to determine whether the UN has become a party to an armed conflict and its responsibility for breaches international humanitarian law.¹⁵⁷

However, and unfortunately for the sake of clarity, the Court has remained inconsistent in its jurisprudence with the designation of the control test employed for such purposes. For example, in numerous instances the Court required the state to be in 'effective control' of a given area, yet the requirements of such control tests remained the same as can be ascertained from *Al-Skeini*; *Bancović*; *Ilascu and Others v Moldova and Russia*; and *Medvedyev, Others v. France* cases, and *Loizidou v. Turkey* in preliminary objections¹⁵⁸

In the *Behrami and Behrami v. France* and *Saramati v. France et al.* the ECtHR had to determine whether it possessed jurisdiction under the European Convention over the respondent states for the actions of KFOR in connection with the prolonged detention of Mr Saramati, and the inaction of the UNMIK related to the failure to de-mine the area of the municipality of Mitrovica after a number of undetonated cluster bombs caused the death to Gadaf Behrami and serious injuries to Bekim Behrami.¹⁵⁹

Despite the involvement on the facts of defendant states, the UN and NATO, the Court declared that the impugned actions and omissions of KFOR and UNMIK could not be attributed to the respondent states, and therefore, it lacked jurisdiction *ratione personae*.¹⁶⁰ However, the ECtHR went further and undertook a clarification of the extent of control exercised and the attribution of the contended acts to the specific entities.

The European Court determined in the *Behrami* case that the 'the UNSC retained *ultimate authority and control* and that *effective command* of the relevant operational matters was retained by NATO'.¹⁶¹ It is necessary to highlight, in order to have a wider understanding of the Court's decision, that it employed several synonyms for the terms that described the different degrees of control; in this regard, the Court equates '*ultimate authority and control*' with '*overall authority and control*'¹⁶², and '*effective command*' with '*operational command*'¹⁶³, '*operational control*'¹⁶⁴ and '*direct operational authority*'¹⁶⁵. It is clear that the Court intended to establish two different levels of control, on the one hand, a general and extensive one, and on the other hand, a more definite degree

¹⁵⁷ As we analyzed in the previous subsection, the ICJ does not support this view.

¹⁵⁸ See ECtHR, *Banković et al v. Belgium et al* (dec.) [GC], no. 52207/99, Reports of Judgments and Decisions 2001-XII, [70]; *Al-Skeini et al v. the United Kingdom* [GC], no. 55721/07, Reports of Judgments and Decisions 2011 [138]; *Ilascu and Others v. Moldova and Russia* [GC], no. 48787/99, Reports of Judgments and Decisions 2004-VII [315]-[316], *Medvedyev and Others v. France* [GC], no. 3394/03, Reports of Judgments and Decisions 2010 [67], and *Loizidou v. Turkey* (preliminary objections), (23 March 1995), Series A no. 310, [62]. The European Court in the following decisions refers to the control test applied as 'effective control' although it is in no way the same as the one designed by the ICJ and ILC, indeed it possess numerous parallelisms with the 'overall control' test of the ICTY.

¹⁵⁹ ECtHR, *Behrami and Behrami v. France* and *Saramati v. France et al* (dec) [GC] no. 71412/01 / no. 78166/01, [5]-[17] (hereinafter *Behrami* case).

¹⁶⁰ *Ibid* [151]-[152].

¹⁶¹ ECtHR, *Behrami* case (n 159) [140]. Emphasis added.

¹⁶² ECtHR, *Behrami* case (n 159) [134]. Emphasis added.

¹⁶³ ECtHR, *Behrami* case (n 159) [135],[139].

¹⁶⁴ ECtHR, *Behrami* case (n 159) [139].

¹⁶⁵ ECtHR, *Behrami* case (n 159) [139].

of control relating to the execution of the operation.

Despite the different degrees of control mentioned above, the European Court stated, for the purpose of attribution of conduct in order to engage international responsibility of the UN, that '[i]n such circumstances, the Court observes that KFOR was exercising lawfully delegated Chapter VII powers of the UNSC so that the impugned action was, in principle, "attributable" to the UN'.¹⁶⁶

Before the contentious actions took place, Resolution 1244¹⁶⁷ of the UNSC '[a]uthorize[d] Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities ...'.¹⁶⁸ Point 4 of annex 2 of that resolution declared that

[t]he international security presence with substantial *North Atlantic Treaty Organization* participation must be deployed under *unified command and control* and *authorized* to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.¹⁶⁹

Although, at first reading it could seem that the Security Council 'authorized' NATO to create an international security presence, the ECtHR upheld that, according to the context and intention of Resolution 1244, what the SC undertook was the 'delegation' to NATO of the power to establish such international security presence as well as its 'operational control', retaining the 'ultimate authority and control'. Consequently, the actions carried out by NATO under such delegation and control were attributable to the United Nations.¹⁷⁰ Besides, for the Court, the fact that the TCNs retain in practice some authority over the donated troops for reasons among others of safety, discipline, and accountability does not diminish the efficacy of NATO's 'operational control'.¹⁷¹

One of the most remarkable aspects of the Behrami control test is that it is applicable to international organizations. Accordingly, it appears that the institutional responsibility of an IO will arise from acts carried out by other entities when such subjects produce a given behaviour being in 'operational control'¹⁷², as long as, it has been done in pursuance of delegated powers of the IO, and the latter retains 'overall authority and control'¹⁷³. Therefore, according to this reasoning, the United Nations will be held accountable when it exercises 'overall control' over a peace operation authorized by it, even if willing organizations or member states exercise 'effective control' over the particular misconduct. It has been argued that when an international organization authorizes a peace operation, its responsibility will arise for acts of individuals, be it troops donated by willing TCNs or PMSCs' employees, involved in such operations when the acts contravene international law, even if such individuals cannot be considered as agents of the state or the organization.¹⁷⁴

The tests envisaged regarding a more general degree of control in the Tadić, Loizidou and Behrami cases can be considered, in opposition to the 'effective control' test of the ICJ and ILC, as more

166 ECtHR, Behrami case (n 159) [141]. Emphasis added.

167 UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244.

168 Ibid [7]. Emphasis added

169 UNSC Res 1244 (n 168) point 4, annex 2. Emphasis added

170 According to the ECtHR if the SC expressly authorizes certain entities to undertake a peace operation but retains overall control, what the SC is in fact doing is delegating such powers to those entities, and therefore the UN could be held accountable for their misconducts: ECtHR, Behrami case (n 159) 43],[129],[141]. See as well Report of S-G, 'Command and Control of United Nations Peace-keeping Operations' (21 November 1994) UN Doc A/49/681, [21]-[26].

171 ECtHR, Behrami case (n 159) [138], [139].

172 As pointed out earlier, the terms 'operational control' should be understood as interchangeable for 'effective command', 'operational control' and 'direct operational authority'.

173 As already indicated the ECtHR equates the words 'overall authority and control' to 'ultimate authority and control'.

174 White, 'Institutional responsibility' (n 9) 388-389, 391. See Cassese, 'The Nicaragua and Tadić Tests' (n 116) 667.

suitable for the purpose of accountability in international law for acts committed by non-state actors such as armed groups, terrorist groups,¹⁷⁵ or even PMSCs.¹⁷⁶ Otherwise, applying a more rigorous control test would entail the impunity of the international persons making use of such actors. Nigel White suggests that in relation to the attribution of conducts of PMSCs to organizations, the lack of absolute control over them should not impede holding the IO accountable.¹⁷⁷ Moreover, he goes further and argues that, at least in peacekeeping practice, institutional responsibility arises when the organization exercises 'overall control' or 'ultimate authority and control', contradicting then the classical view of 'effective control'.¹⁷⁸ A strong argument in favour of the control tests dealt with in this section is that in peace operations, international organizations do not possess their own armed forces, therefore they are less likely to exert operational control over national contingents and the PMSCs that might be included therein, inasmuch as states do.¹⁷⁹

The international responsibility of the United Nations for misconducts of PMSCs, hired by TCNs to provide their services in UN peace operations will be guaranteed in most situations by making recourse to a less stringent test such as those expressed in the Tadić, Loizidou and Behrami cases. If such tests are also applied when the UN directly hires PMSCs the result would be the same, and therefore most violations of international humanitarian law perpetrated by military companies would not go unpunished.

3. UN practice: Command and control.

In earlier subsections, for the purpose of ascertaining the degree of control required to hold the United Nations accountable for violations of IHL perpetrated by PMSCs providing services to a UN peace operations, we analysed the views of the most relevant international tribunals, institutions, and legal scholars. However, the present investigation would not be complete without taking into account the practice of the United Nations over the matter.

Very often, International Organizations have to rely on other entities in order to fulfil their objectives due to their limited resources, and the United Nations is not an exception. In relation to the maintenance of international peace and security, article 43 of the UN Charter envisages the creation of a standing peacekeeping force through special agreements between the SC and member states, however, such agreements have never been concluded. Therefore, for such purpose, the UN had relied on member states, other international organizations and more recently, on private military and security companies.¹⁸⁰

In order to analyse the attribution of conduct to the UN in the context of peace operations, it is important to highlight that according to UN practice, the Organization does not accept as their own acts, actions or omissions of forces simply authorized by it.¹⁸¹ For instance, in relation to a claim in the aftermath of a car accident on 13 April 1993 in Somalia, where Belgian Troops were involved, the Director of the Field Administration and Logistics Division of the Department of Peacekeeping

175 See Cassese, 'The Nicaragua and Tadić Tests' (n 116) 665-667.

176 White, 'Institutional responsibility' (n 9) 388-389, 391

177 White, 'Institutional responsibility' (n 9) 391.

178 White, 'Institutional responsibility' (n 9) 391

179 See White, 'Institutional responsibility' (n 9) 392

180 Østensen, 'UN Use of PMSCs' (n 13) 11.

181 See Gaja, 'Second Report' (n 103) 32; White, 'Institutional responsibility' (n 9) 387.

Operations (DPKO) of the UN addressed a letter to the Permanent Representative of Belgium to the UN stating that Belgian troops in Somalia, at the time when the accident took place, were part of the Unified Task Force (UNITAF) and not of the United Nations Operation in Somalia (UNOSOM). He also remarked that UNITAF troops were not under the UN 'command' and that the Organization had repeatedly refused responsibility for claims arising from incidents where UNITAF troops were implicated.¹⁸²

From the above paragraph, it could be drawn that the UN does not accept liability for acts in the context of authorized peace operations when it does not exercise 'command' over the troops. According to Giorgio Gaja, this approach seems to have been broadly accepted by TCNs involved in operations authorized by the Security Council.¹⁸³ It is clear from the aforementioned assertion, that in the opposed case, namely, when the UN authorizes operations retaining certain authority over it, the institutional responsibility of the organization would arise. This reasoning seems to be in line with the one already studied in the previous subsection by the ECtHR in the Behrami case.

A memorandum of the UN Office of Legal Affairs in relation to an accident of a British helicopter operating in the context of the UN Peacekeeping Force in Cyprus (UNFICYP) declared that

The crew members of the helicopters are members of the British contingent of UNFICYP and the helicopter flights take place in the context of the operations of UNFICYP. Through the chain of command, the operations in which the helicopters are involved take place under the ultimate authority of the UNFICYP Force Commander and are the responsibility of the United Nations ...

As the carrier, it is the United Nations that could and normally would be held liable by third parties in case of accidents involving UNFICYP helicopters and causing damage or injuries to these parties; therefore third-party claims should normally be expected to be addressed to the United Nations.¹⁸⁴

Interpreting jointly the aforementioned letter with this verdict, it could be established that the Organization accepted institutional responsibility from acts committed under its 'overall control'; and therefore, its responsibility would arise when it exerts such control over PMSCs conduct. However, in 1996 the Secretary-General changed radically the practice of the United Nations by holding that

The international responsibility of the United Nations for combat-related activities of United Nations forces is premised on the assumption that the *operation in question* is under the *exclusive command and control of the United Nations*. Where a Chapter VII-authorized operation is conducted under national command and control, international responsibility for the activities of the force is vested in the State or States conducting the operation. The determination of responsibility becomes particularly difficult, however, in cases where a State or States provide the United Nations with forces in support of a United Nations operation but not necessarily as an integral part thereof, and where operational command and control is unified or coordinated ...

In joint operations, international responsibility for the conduct of the troops lies where operational command and control is vested according to the arrangements establishing the modalities of cooperation between the State or States providing the troops and the United Nations. In the absence of formal arrangements between the United Nations and the State or States providing troops, *responsibility would be determined in each and every case* according to the degree of *effective control* exercised by either party in the conduct of the operation.¹⁸⁵

This assertion seems to be aligned to the 'effective control' approach of the ICJ and ILC, and

182 Unpublished letter dated 25 June 1998 in Gaja, 'Second Report' (n 103) 33.

183 Gaja, 'Second Report' (n 103) 33.

184 United Nations Juridical Yearbook, (1980) Sales No. E.83.V.1, 184-185. Emphasis added.

185 Report of the S-G, 'Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations' (20 September 1996) UN Doc A/51/389, [17]-[18].

therefore contradicts the previous practice of the UN on the matter.¹⁸⁶ Thus, and taking into account the recent UN peacekeeping practice the question of responsibility could be reduced to the question, who has 'effective control' over the conduct in question? It is essential to highlight that nothing impedes in that statement holding the United Nations accountable for acts of PMSCs, either hired by TCNs or the Organization, when the UN exerts over them the required level control.¹⁸⁷ However, such a high threshold requires a very rigorous degree of involvement of the organization on the facts, which is not often the case as we discussed in the section 2.1 of chapter 3..

After the major UN change of direction regarding institutional responsibility, shifting from what it seems an 'overall control' to an 'effective control' test, holding the organization accountable, according to its practice, has been more arduous than ever. The same degree of control can be deemed to be required to attribute acts of PMSCs providing security services to the Organization, either directly hired by the organization or by the TCNs. However, as we already examined, the new level of control required by the United Nations would add extra obstacle on the way of holding the Organization responsible under international law for PMSCs unlawful acts.

4. PMSCs as UN agents

In the previous subsections, we analysed the current views about the different levels of control necessary in order to hold an international organization like the United Nations accountable for violations of IHL by PMSCs providing services in peace operations. Here, we will study the possibility of considering such companies as agents of the UN for the purpose of responsibility.

It has been argued that the UN would be responsible under customary international law for the conduct of their servants and agents in pursuance of their functions.¹⁸⁸ Indeed, the ICJ in its advisory opinion *Immunity from Legal Process* declared that in situation of

[d]amages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity ... [t]he United Nations may be required to bear responsibility for the damage arising from such acts.¹⁸⁹

The ILC holds a similar view in article 6 of the Draft Articles on the Responsibility of International Organizations (DARIO),¹⁹⁰ offering an 'acting in performance of functions' test for agents and organs of an IO.¹⁹¹ According to that article, the conduct of a UN organ or agent in the performance of its functions should be considered as an act of the UN without regard to the position the organ or agent has been entrusted, ie an act of a UN agent will be attributed to the Organization when he/she acts following the tasks he/she has been assigned. Moreover, in order ascertain the functions of such organ or agent due respect should be paid, among others, to the rules of the UN on the matter,¹⁹²

The fundamental question that arises at this stage in order to bear the UN responsible for security

186 Cf White, 'Institutional responsibility' (n 9) 384, 387; Seiberth, *PMSCs in International Law* (n 3) 100-104.

187 White, 'Institutional responsibility' (n 9) 384.

188 Amerasinghe, *Principles of Institutional Law* (n 36) 78.

189 ICJ, *Immunity opinion* (n 102) [66].

190 See Article 6 ILC, 'Draft Articles on the Responsibility of International Organizations, with Commentaries' (2011) UN Doc A/66/10 (hereinafter DARIO Commentaries).

191 Cf White, 'Institutional responsibility' (n 9) 392.

192 See article 6, para 9 DARIO Commentaries.

companies misconducts is whether PMSC employees can be considered as agents of the United Nations. In this respect, the ICJ already gave a definition of 'agent' in Reparations for Injuries opinion considering such entity as

any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the organization with carrying out, or helping to carry out, one of its functions – in short, any person through whom it acts.¹⁹³

The ILC follows a similar definition in article 2(d) DARIO based on that of the ICJ.¹⁹⁴ Thus put, can PMSCs be considered to perform functions of the organization when providing services to peace operations? At least, when they are directly hired by the UN, it seems clear that PMSCs may be entrusted to *carry out or help to carry out*¹⁹⁵ functions, in particular, of the peace operation or, in general, of the Security Council and General Assembly in support of the maintenance of international peace and security,¹⁹⁶ through different tasks such as of mining clearance, intelligence, patrolling, etc; therefore PMSC employees could be considered as United Nations agents. This reasoning has been supported by Nigel White affirming that definition of agent in DARIO is sufficiently wide to include private contractors.¹⁹⁷ Contrarily, the Procurement Division of the United Nations contradicts this view, and has made clear in several documents that contractors shall not be considered as UN agents, what would prevent PMSCs employees from that status.¹⁹⁸ Notwithstanding, it has been argued that according to international law PMSC employees can become agents regardless of the position adopted by the UN in the matter since the provisions such as those of the Procurement Division do not affect third parties.¹⁹⁹

In conclusion it seems likely to attribute PMSCs' conduct to the UN as agents at least when PMSCs they are directly contracted by the Organization to carry out tasks intended to support the maintenance of international peace and security, and the misconduct takes place in pursuance of such tasks.

193 ICJ, (n 30) Reparations for Injuries opinion, 7. Chia Lehnardt argues that the definition of 'agent' given by the ICJ in that opinion is broad enough to consider as such any person contributing to a peacekeeping operation without regard to the activity performed or the control exerted by the UN: Lehnardt, 'Peacekeeping' (n 3) 210.

194 Article 2(d) DARIO: ' "agent of an international organization" means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

195 Emphasis added.

196 The primary responsibility for the maintenance of international peace and security of the SC is expressly declared in article 24 UN Charter, however the subsidiary responsibility of the General Assembly in that respect was impliedly stated in UNSG Res 377A(V) (3 November 1950) UN Doc A/RES/377(V).

197 White, 'Institutional responsibility' (n 9) 392. Similarly Chia Lehnardt affirms that '[a]t a minimum, if private military personnel are tasked directly by the UN with aspects of the Security Council mandate establishing the peacekeeping operation, the UN deploys PMSC employees to fulfil its functions and thus acts through them. Accordingly, any misconduct on their part will be seen as UN conduct, regardless of their formal status or whether they are integrated in the peacekeeping force or not': Lehnardt, 'Peacekeeping' (n 3) 211-212.

198 UNPD, 'United Nations Procurement Manual' (Revision 7, 2013) Chapter 13(10)(8) <<https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/pm.pdf>> accessed 25 July 2017; UNPD, 'General Conditions of Contracts: Contracts for the Provision of Goods and Services' (Revision 2012) Section 1.2,

199 Lehnardt, 'Peacekeeping' (n 3) fn 34.

Conclusions

Throughout this dissertation, several sensitive issues regarding the accountability of the United Nations for IHL violations by PMSCs providing services to a UN peace operations have been addressed.

The United Nations as an international organization invested with international legal personality is bound by treaty law, general principles of international law, *jus cogens* and international custom, including customary international humanitarian law. Consequently, when customary IHL is applicable the institutional responsibility of the Organization will arise if the breaches of IHL can be attributed to it.

The application of IHL is based on a factual basis, challenging this assertion would amount to a denial of the distinction between: 'ius and bellum' and 'ius in bello'; a defeat of several purposes of IHL such as the protections of those 'hors de combat' and those who do not take part in the hostilities; a destruction of the principle of equality between belligerents; and would discourage other armed groups to respect IHL. This branch of law will apply in case of international armed conflicts when an international organization is involved when a certain degree of intensity is reached; on the other hand, for non-international armed conflicts, IHL will be applicable when the clashes attain a required level of violence and the armed groups therein possess a determined organizational level. Moreover, an international organization could also be involved in a non-international armed conflict when it provides a definite support to one of the parties in the conflict. In addition, the practice of the United Nations in the matter confirms the application of international humanitarian law to its forces.

The attribution of conduct is a fundamental requirement for the establishment of the participation of the United Nations in an armed conflict and the subsequent application of IHL, and for the determination of its institutional responsibility. However, many theories have been designed by international courts, institutions and legal scholars requiring different degrees of control by the international subject in order to attribute it the wrongful conduct. On the one hand, one of the most stringent tests is the 'effective control' test developed as developed by the ICJ and the ILC requires the to give instructions, direct, control or authorize in relation to a particular misconduct, what in the case of the United Nations and PMSCs would equate to a denial of the reparation of the grievance caused. On the other hand, there exist laxer control tests, such as the ones expressed in the one upheld by the ICTY (overall control) and the ECtHR in *Loizidou v. Turkey* (effective overall control) and in the *Behrami* case (ultimate authority and control); despite their nuances they all have as common denominator a less rigorous requirement of control to impute acts to entities of international law, thus, limiting the number of cases of impunity for IHL violations. It appears that the practice of the United Nations on the matter has varied over time, departing from a slacker degree of control to a more severe one.

Finally, another way in accordance with international law in which PMSC conduct could be attributed to the United Nations is by considering PMSC employees as agents of the Organization, although this view conflicts with views of the United Nations on the matter.

Abbreviations

AP	Additional Protocol to the 1949 Geneva Conventions
ARS	Articles on Responsibility of States
CA GCs	Common article to the Geneva Conventions
COE:	College of Europe
CPIUN	Convention on the Privileges and Immunities of the United Nations
CUP	Cambridge University Press
CUP	Cambridge University Press
DARIO	Draft Articles on the Responsibility of International Organizations
DPKO	Department of Peacekeeping Operations
ECHR	European Convention on Human Rights
FRY	Federal Republic of Yugoslavia
GC	Geneva Convention
IAC	International armed conflict
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICRC CIHL	Customary Rules of the International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
ILA	International Law Association
ILC	International Law Commission
IPOA	International Peace Operations Association
ISOA	International Stability Operations Association
NIAC	Non-international armed conflict
OUP	Oxford University Publications
PMSC	Private military contractor
SOFA	Status of the force agreement
TCN/C	Troop contributing nation / Troop contributing country
TRNC	Turkish Republic of Northern Cyprus

UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNFICYP	Peacekeeping Force in Cyprus
UNGA / GA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNITAF	Unified Task Force
UNMIL	United Nations Mission in Liberia
UNOCI	UN Mission in Côte d'Ivoire
UNPD	United Nations Procurement Division
UNPK	United Nations Peace Keeping
UNPROFOR	United Nations Protection Force
UNSC / SC	United Nations Security Council
UNSG /S-G	United Nations Secretary-General
UNTAET	United Nations Transitional Administration in East Timor
US	United States of America
WFP	World Food Programme

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