

The International Criminal Liability of the International Intervention Forces: between broad mandate & limited accountability

Fatma DOUANE ⁽¹⁾

⁽¹⁾ Lecturer 'A', Faculty of Law and Political Science,
Mouloud Mammeri University, Tizi-Ouzou, Algeria.
Email: fatma.douane@ummto.dz

Abstract :

The international community has been making efforts to imbue penal accountability for violations of humanitarian international law with an international character. In this regard, the International Criminal Court prosecutes all violators, regardless of their nature, including international intervention forces assigned to peacekeeping. However, the reality shows serious violations by some parties due to the diversity of these forces' categories. In addition, raising criminal liability faces several obstacles due to the diverse nationalities of the intervention force members; and the complementarity principle, which allows for escaping sanctions. Therefore, it is necessary to review the Rome Statute and to foster the Court's independence to bridge gaps and overcome obstacles.

Keywords:

Criminal liability, International intervention forces, Rome Statute, Mandate, Mercenaries.

Received: 09/02/2026 & Accepted: 18/05/2026 & Edited: 30/06/2026

Corresponding author: Fatma DOUANE, email : fatma.douane@ummto.dz

المسؤولية الجنائية الدولية لقوات التدخل الدولي بين التفويض الواسع ومحدودية المساءلة

الملخص:

سعى المجتمع الدولي إلى إضفاء الطابع الدولي للمساءلة الجنائية عن انتهاكات قواعد القانون الدولي الإنساني، وهو ما تجسد من خلال إنشاء المحكمة الجنائية الدولية، التي تتولى متابعة المنتهكين مهما كانت صفتهم، حتى لو تعلق الأمر بقوات التدخل الدولي التي تنحصر مهمتها في حفظ السلام، إلا أن الممارسة تؤكد وجود انتهاكات وتجاوزات خطيرة يمارسها البعض من عناصرها، خاصة وأن تنوع الفئات التي تتشكل منها هذه القوات قد ساهم بشكل كبير في الانحراف عن المهام الموكلة لها. غير أن التطبيق العملي للمساءلة الجنائية تعرف العديد من العقبات المرتبطة بتعدد جنسيات عناصر قوات التدخل الدولي، وإعمال مبدأ التكامل الذي من شأنه المساهمة في الإفلات من العقاب، الأمر الذي يستوجب إعادة النظر في نظام روما الأساسي وتعزيز استقلالية المحكمة من أجل سد الثغرات والإجراءات المقيدة لفعاليتها.

الكلمات المفتاحية:

المسؤولية الجنائية، قوات التدخل الدولي، نظام روما الأساسي، آلية التفويض، المرتزقة.

La responsabilité pénale internationale des forces d'intervention internationales : entre mandat étendu et responsabilité limitée

Résumé :

La communauté internationale s'efforce de consacrer le caractère international de la responsabilité pénale pour les violations graves du droit international humanitaire. Dans cette perspective, la Cour pénale internationale est compétente pour poursuivre les auteurs de ces violations, y compris les membres des forces internationales chargées du maintien de la paix lorsque les conditions de sa compétence sont réunies. Toutefois, la pratique révèle que certaines de ces forces peuvent être impliquées dans la commission de violations graves du droit international humanitaire, ce qui soulève la question de l'effectivité des mécanismes de répression internationale.

La mise en œuvre de la responsabilité pénale individuelle des membres de ces forces se heurte à plusieurs obstacles juridiques et pratiques, notamment la

diversité des nationalités de leurs membres, la multiplicité des juridictions potentiellement compétentes et les limites découlant du principe de complémentarité, qui confère une priorité aux juridictions nationales dans l'exercice des poursuites. Ces difficultés peuvent, dans certains cas, compromettre l'effectivité de la répression et favoriser l'impunité.

Dès lors, il apparaît nécessaire de renforcer le cadre juridique international applicable, notamment par une révision de certaines dispositions du Statut de Rome et par la consolidation de l'indépendance institutionnelle de la Cour pénale internationale, afin de combler les lacunes existantes et d'assurer une meilleure effectivité de la responsabilité pénale internationale en cas de violations du droit international humanitaire.

Mots clés:

Responsabilité pénale, Forces d'intervention internationales, Statut de Rome, Mandat, Mercenaires.

Introduction

The collective security system is based on the principle that states are responsible for maintaining international peace and security, as outlined in Chapters VI and VII of the UN Charter. Chapter VI provides the primary framework for implementing this system by focusing on the peaceful resolution of disputes through negotiation, arbitration, and mediation. Other measures are employed only when a peaceful resolution to the conflict proves impossible, and the measures taken under Chapter VI fail. Therefore, Chapter VII encompasses both military and non-military measures for maintaining international peace and security. These measures include forming an international force comprised of troops from various countries, operating within the United Nations framework and pursuant to Security Council resolutions.

These international intervention forces play a crucial role in maintaining international peace and security by preventing international and non-international armed conflicts. They promote preventive diplomacy and disarmament among conflicting parties, contributing to the stabilization of conflict zones. This includes organizing elections, building political institutions, and protecting civilians from all forms of aggression and violations.

However, matters become more complicated when UN forces operating under the guise of peacekeeping operations commit violations of international humanitarian law. These operations are defined as follows: "operations organized by the United Nations and other regional organizations involving the use of military personnel and police officers without combat powers aimed at maintaining or restoring peace in conflict zones." They are considered temporary operations intended solely to prevent the escalation and

intensification of conflicts. Their role is not to resolve the political disputes that led to the outbreak of conflict, but rather to provide the necessary climate and time for a negotiated settlement between the parties involved"¹. As a mechanism for maintaining international peace and security within the framework of the collective security system, these forces are expected to defend human rights and protect victims in conflicts, especially if the violations constitute international crimes. Such crimes fall under the jurisdiction of the International Criminal Court (ICC), established as an expression of the international will to achieve criminal justice at the international level. The ICC ensures the realization of the principles of justice, particularly those related to legality and equality, and puts an end to all violations of international law, especially international humanitarian law.

The importance of this study lies in understanding the nature of the responsibility borne by members of international intervention forces when they commit crimes while performing their duties, and balancing it between what is enshrined in international instruments and international practice. It also aims to highlight the obstacles to the establishment of international accountability for these forces before the International Criminal Court.

The central question of this study is whether international intervention forces fall under the jurisdiction of the International Criminal Court (ICC) when they commit serious violations of international humanitarian law, despite having an international mandate for the tasks they undertake.

Through analysis and critique of international texts - particularly those contained in the Rome Statute and various international agreements - in addition to extrapolating data derived from the establishment and operation of the International Intervention Forces, we will examine the most significant factors contributing to their commission of international crimes (the first chapter) and limitations on establishing their criminal responsibility (the second chapter).

Chapter One: Factors Contributing to the Commission of International Crimes by the International Intervention Forces

The emergence of serious violations of the rules of international humanitarian law by United Nations peacekeeping forces is due to several factors. These include the delegation of certain entities to carry out peacekeeping operations (the first section) and the opening up of these forces to people for whom the main goal of engaging in peacekeeping operations is material gain, as is the case with mercenaries (the second section).

¹ Qtd. Ahmed KOLLI, "The development of the UN Peacekeepers", *the critical journal of laws and political sciences*, Vol. 05, Issue 01, Faculty of Laws and Political Sciences, University of Mouloud Maameri, Tizi Ouzou, Algeria, 2010, p. 231-232.

Section One: Mandate in Peacekeeping Operations

The measures adopted by the United Nations, whether by the General Assembly or the Security Council, aim to fulfill the organisation's objectives as set out in Article 1 of the UN Charter. The primary objective is to maintain international peace and security. One such measure is the establishment of international intervention forces to assist countries experiencing conflict or disputes in restoring peace and maintaining international peace and security².

The tasks assigned to UN peacekeeping forces have evolved remarkably. Initially limited to implementing ceasefires and preventing warring parties from resuming hostilities, these forces' responsibilities have expanded alongside developments in international practice and in armed conflicts. These include humanitarian work and election monitoring, which have contributed to the emergence of several new dimensions in peacekeeping operations. The concept of 'peacekeeping' has evolved into 'peace building', where operations take on a military character aimed at rebuilding a country devastated by armed conflict³.

Significant variations have been observed in the legal foundations upon which peacekeeping forces were established, particularly as many United Nations member states have objected, arguing that peacekeeping operations fall under the exclusive jurisdiction of the Security Council. This has led to differences in the tasks assigned to these forces: their military character absent when they are established under Chapter VI of the UN Charter and present when they are established under Chapter VII⁴.

The reluctance of states to deploy their own citizens as peacekeepers has led to a reliance on private security companies to carry out these operations. While these companies can provide competent and professional personnel, experience shows that they have a negative impact on armed conflicts, particularly in areas rich in natural resources. In such cases, operating under the auspices of the United Nations has become a means of illegally exploiting these resources due to the lack of neutrality in operations caused by the diverse nationalities of the personnel involved⁵.

² Katsumi ISHIZUKA, "Issues on the protection of civilians in UN peacekeeping operations", *Athens Journal of Law*, Vol. 11, Issue 2, Business and Law Division, Athens Institute, Greece, 2025, p. 64.

³ Ahmed KOLLI, op. cit., pp. 244 - 250.

⁴ Mohamed Nacer BOUGHEZALLA, "UN Peacekeepers", *the Algerian journal for legal*, Vol. 52, Issue 4, Faculty of Laws and Political Sciences, University of Algiers 1, Algeria, 2015, pp. 419-421.

⁵ Badr-Edine MERGHENI & Mohamed Al-Bachir AHMOUDA, "Mandating peacekeeping operations", *Journal of Law Voice*, Vol. 07, Issue 01, Faculty of Law and Political Sciences, University of Aldjilali Bounaama, Khemis Meliana, Algeria, 2020, p. 1004.

In addition, private security companies are considered commercial enterprises because they aim to profit from their work. They have therefore been defined as follows: 'Private commercial entities that provide military and/or security services'⁶. Therefore, protecting victims' rights and adding a humanitarian dimension to peacekeeping operations are not among these companies' goals. Rather, these operations are commercial enterprises that generate considerable financial profits. A British private military company seized control of oil in Angola in partnership with regional security companies and Canadian economic entities during the civil war. Ongoing conflicts in the region have become a primary source of profit, in exchange for efforts to stop the fighting, combat insurgency, and eliminate other forms of violence⁷.

The United Nations relied on the broad authority of the Security Council and the General Assembly to form these forces, as there is no explicit provision authorising the delegation of peacekeeping operations to private security companies. Instead, it inferred this authority from Articles 22 and 29 of the UN Charter. Therefore, the delegation of peacekeeping operations is considered⁸ a relinquishment of its original mandate, thereby undermining the organisation's

⁶ Qtd. Mohamed Djelloul ZEAADI, "Resort to private security and military agencies in peacekeeping operations", *Journal of Laws and human sciences*, Vol. 10, Issue 03, University of Ziane Achour, Djelfa, Algeria, 2017, p. 324.

⁷ Bertrand BADI & Dominic FIDEL, *The situations of the world 2015, the new wars*, translated by Nassir Marwa, Research and Studies Center, Arab Thought Foundation, Saudi Arabia, 2015, pp. 133 – 134.

⁸ Despite their mandates, international intervention forces have often failed to fulfill their assigned tasks. For instance, the United Nations Mission in Rwanda (UNAMIR) was unable to prevent the Rwandan genocide of 1994, resulting in its withdrawal. Established in October 1993 by Security Council Resolution 872 under Chapter VI of the UN Charter, UNAMIR was tasked with monitoring the implementation of the Arusha Peace Agreement between the Rwandan government and the Rwandan Patriotic Front. Similarly, UNPROFOR, which was established in 1992 to secure and maintain peace in demilitarised zones, was unable to protect the designated safe area. This resulted in the Srebrenica massacre in Bosnia in 1995. This failure was due to a lack of weapons and military supplies, despite the force including troops from countries such as the Netherlands, France, and Canada. See: M. Gady BYABAGABO, *UNAMIR and the protection of civilian in Rwanda in 1994: scope and limits*, thesis master's degree of Arts, Centre for conflict management, University of Rwanda, 2021, pp. 17 – 24; See also: Allison PINSKI, *What Defines a Successful Peacekeeping Mission: An analysis of the United Nations Protection Force (UNPROFOR) in Bosnia and Herzegovina*, thesis Undergraduate Thesis, Political science, Hartwick College, University of Rwanda, University Oneonta, New York, 2017, pp. 5 – 7.

credibility and deviating from the purpose for which these forces were established: to resolve conflicts and facilitate compromise between the parties involved⁹.

The diverse composition of UN forces is considered the most important factor in some of their members committing crimes while carrying out their activities. One of the forces that recorded a considerable number of violations and attacks was the MONUSCO mission, formed to ensure the implementation of the 1999 peace agreement by monitoring three conflict zones under the control of Rwanda, Uganda, and the Democratic Republic of Congo. Further peace agreements were signed in 2002, after which rebel militias assumed leadership positions and violence spread in an attempt to control the electoral process. This contributed to the extension of the mandate of the UN mission¹⁰.

The Montreux Document established selection criteria for international security and protection units. These criteria include verifying personnel's records for freedom from violations, ensuring that units' forces have not committed crimes, and requiring training to familiarize the personnel with international humanitarian law and the rules governing use of force in international relations. The units must also have internal control mechanisms to support the system, enable victims to report violations and crimes, and provide necessary protection. Additionally, the Document emphasizes the importance of monitoring weapons and ammunition regarding their legitimacy and management. It also states that the units should only use weapons in cases of self-defense or defense of others, except for offensive purposes or to protect property¹¹.

⁹ Badr-Edine MERGHENI & Mohamed Al-Bachir AHMOUDA, op. cit., p. 1005.

¹⁰ Josephine D'URSO, Criminality and framing in UN peacekeeping: Insights from stabilization missions in Haiti, the Democratic Republic of Congo, and Mali (2004 – 2023), Thesis of Master of Arts in conflicts studies and human rights, Utrecht University, 2024, p.45.

¹¹ UN, Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, General Assembly, 63 session, 6 October 2008, A/63/467 – S/2008/636, pp. 8 – 9 and pp. 20 - 25.

Section Two: Mercenaries Join the International Intervention Forces

In accordance with Article 43 of the UN Charter, the composition of peacekeeping forces is negotiated with various countries to ensure the deployment of competent and professional personnel. According to this article, member states must make their armed forces and all necessary facilities available to the Security Council. This makes them subject to the provisions of international humanitarian law, including their status as combatants who are entitled to prisoner-of-war status if captured by the enemy¹².

However, the authorisation mechanism has led to the deployment of large numbers of personnel from private security companies in conflict zones to carry out tasks on behalf of the United Nations. This raises many issues, particularly with regard to composition, as these forces include individuals of multiple nationalities, as well as mercenaries joining them for financial gain.

The term 'mercenary' refers to non-governmental forces that, for the first time in the 20th century, were able to utilise the equipment and expertise of a modern army¹³. A mercenary is defined as a person who is recruited, either locally or abroad, to participate in an armed conflict. Their primary motivation for doing so must be personal gain, and they must be promised a material reward by, or on behalf of, a party to the conflict that is substantially greater than that promised or paid to combatants of a similar rank and function in that party's armed forces. According to Article 1 of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, a person must meet certain conditions to be considered a 'mercenary', such as being a foreigner who is not a national of or resident in any party to the conflict and not having proven membership of the armed forces of any party to the conflict¹⁴.

The inclusion of mercenaries in UN forces has led to numerous abuses. One such abuse was the refusal to comply with orders issued by commanders of international units, as occurred in Scotland in 1993, in Bosnia, and in Italy. This has led to many crimes being committed¹⁵, including sexual assault, racially motivated murder, and execution, which have been classified as war crimes and crimes against humanity.

¹² Saad AL-AGGOUNE, "The application of the international humanitarian law on the UN forces in international peacekeeping operations", *Journal of Laws and human sciences*, Vol. 6, Issue 2, University of ZianeAchour in Djelfa, Algeria, 2013, p. 110.

¹³ Bertrand BADI & Dominic FIDEL, op. cit., p. 134.

¹⁴ Article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989.

¹⁵ Mohamed Nacer BOUGHEZALLA, op. cit., p. 430.

In its statements, the Security Council fully condemned these violations, emphasising the need for the Secretary-General to address them and implement a 'zero tolerance' policy towards any sexual exploitation or abuse. These measures should be preventive in nature to stop such incidents from occurring¹⁶.

During its forty-second session in 2019, the Human Rights Council also affirmed that mercenaries should not be used to violate human rights or impede people's right to self-determination. The Council further affirmed that supporting, using, financing, or training mercenaries violates the purposes of the United Nations as set out in the UN Charter¹⁷.

Due to the serious threat that mercenaries pose to the security and safety, the international community has sought to curb their activities. This has been achieved by setting up mechanisms to combat this phenomenon under the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries. This convention came into force on 20 October 2002. In 2019, the Human Rights Council urged judicial bodies at international and national levels to exercise jurisdiction over mercenaries and prosecute them transparently, publicly, and fairly. However, this call was made without specifying whether the mercenaries in question were operating within the framework of peacekeeping missions. The emphasis was on national jurisdiction for the prosecution of mercenaries participating in peacekeeping operations under contract with a private security company. This is supported by Article 9(3) of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which states: '*3. the present convention does not exclude any criminal jurisdiction exercised in accordance with national Law*'¹⁸.

Due to the seriousness of the activities that mercenaries carry out against the security and safety of states, the international community has sought to limit their use by organising mechanisms to combat this phenomenon under the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, which entered into force on 20 October 2002.

In 2019, the Human Rights Council requested that international and national judicial authorities subject mercenaries to their jurisdiction and prosecute them in a transparent, public, and fair manner. However, this request was made in general terms and did not specify whether the mercenaries were working within the assigned tasks of peacekeeping forces. The text of Article 9/3 of the International Convention against the Recruitment of Mercenaries

¹⁶ The UN peacekeeping operations, the reference of the Security Council practise 2004-2007, p. 1201.

¹⁷ The Human Rights Council, the use of mercenaries as a tool to violate the human rights and hinder autodetermination, resolution 42/9 of 26 September 2019, doc A/HRC/RES/42/9.

¹⁸ Article 9(3) of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989.

emphasises national jurisdiction in prosecuting mercenaries who participate in the peacekeeping force when operations are carried out through delegation to a private security company: 'This Convention shall not preclude the exercise of any criminal jurisdiction in accordance with national law.'

Given the nature of the situation in which the international intervention forces are operating, they must fully comply with the rules of international humanitarian law. Action must also be taken to prevent any violations or crimes, as these would result in criminal liability under the Statute of the International Criminal Court.

Chapter Two: the Limits of the International Criminal Accountability of the International Intervention Forces

In peacekeeping operations, it is assumed that members of the forces adhere to the rules of international humanitarian law and are committed to the principles of transparency and neutrality when carrying out their assigned tasks. However, this assumption can be refuted, as many violations have been recorded by individuals belonging to these forces. However, they enjoy special criminal protection under certain conditions (the first section), and are excluded from criminal accountability before the International Criminal Court due to the difficulty of applying the Rome Statute's procedures to their crimes (the second section).

Section One: The Conditions of Enforcing ICC Statue on the International Intervention Forces

The international community has sought to establish international justice and prosecute anyone who violates international law. The establishment of the International Criminal Court in 2002, following the adoption of the Rome Statute in 1998, is considered a fundamental step along this path. This enshrined the principle of individual criminal responsibility, regardless of official status. However, the ratification of the Statute by states has rendered the prosecution of all perpetrators of international crimes incomplete and ineffective due to its territorial jurisdictional limitations. The Security Council was given a key role in referring cases within the Court's jurisdiction, but the veto power has prevented it from exercising its role. Nevertheless, other means of prosecution have been employed, particularly for UN forces operating in the name and on behalf of the United Nations, such as the establishment of investigative bodies and the creation of specialised and hybrid courts.

By contrast, members of United Nations peacekeeping forces are granted criminal protection under Article 8 (2) (e) (iii) of the Rome Statute of the International Criminal Court. This means that anyone who commits a violation against them is punished for committing a war crime. However, upon examining this article, we find that it stipulates certain conditions for benefiting from this

protection, mainly relating to entitlement, derived from the phrase 'as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict'¹⁹.

In addition to this condition, there is another related to the individual who was attacked and the peacekeeping forces to which they were affiliated. Proving this affiliation is the responsibility of the United Nations. Protection is only provided if the crime occurred in the context of an armed conflict; otherwise, describing it as a war crime would be inaccurate.

The 2008 Montreux Declaration addressed the protection of members of the armed forces in light of the rules enshrined in the four Geneva Conventions. The Declaration distinguishes between individuals who do not directly participate in hostilities and benefit from the legal status of civilians and individuals who participate in hostilities or are members of a state's regular armed forces and thereby lose this protection. They may also be considered prisoners of war²⁰.

Many countries, particularly the United States, have sought numerous rulings to prevent the International Criminal Court (ICC) from exercising its jurisdiction over crimes committed by their soldiers during UN peacekeeping operations. They have done so by concluding immunity agreements that shield their citizens from ICC criminal prosecution. The United States has exploited a legal loophole in Article 98 of the Rome Statute to achieve this. This article explicitly states that the Court may not make any request, whether for evidence to complete investigations or for extradition, if such a request conflicts with the state's obligations under immunity agreements²¹.

The principle of equality in criminal responsibility, enshrined in Article 27, applies to all individuals regardless of their official status as perpetrators of international crimes. However, this principle is relative, and its application conflicts with numerous restrictions in the Rome Statute, which render the Court's jurisdiction virtually paralysed. The will of states takes precedence over international criminal justice, a fact further emphasised by Article 124 of the Rome Statute. Upon becoming a party to the Statute, this article grants a state the right to declare its non-acceptance of the Court's jurisdiction with respect to war crimes as defined in Article 8 for seven years from the Statute's entry into force. This provision was included to encourage greater state participation in, and ratification of, the Rome Statute²².

¹⁹ Article 8 (2) (e) (iii) of the Rome Statute of 1998.

²⁰ UN, Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, op. cit., pp. 10 – 11.

²¹ Article 98 of the Rome Statute of 1998.

²² Ali LOUNICI, "The massive violations of the humanitarian international law, Article 8/2 of ICC Statute and the obstacles of its application", *The international journal for law and*

The 2008 Montreux Declaration is non-binding and does not create new obligations. However, it addresses the legal obligations of states regarding peacekeeping operations and personnel by compiling existing rules and recommended best practices. However, the Declaration emphasizes the necessity of fulfilling a set of conditions for a state to be held responsible for violations of international humanitarian law committed by members of private security companies with which it contracts, thus requiring compensation. These conditions are as follows²³:

- The integration of regular armed forces.
- The forces must operate under a command accountable to the state and possessing the powers of a public authority.
- The forces must adhere to the instructions and directives issued by the contracting state and be under its effective control.

The 2008 Montreux Document determined that states employing private security forces are not exempt from international obligations. Therefore, the state must take the necessary measures to ensure these forces respect international humanitarian law. This includes providing them with training and preventing violations. The state must also work to stop any violations that have been committed. Otherwise, the state will be held responsible for violations of international humanitarian law. This could result in termination of the contract, financial penalties, and exclusion from future contracts. Not to mention the possibility of revoking the private security company's license²⁴.

Section Two: Issues in Enforcing Rome Statute on the International Intervention Forces

International practice raises several issues regarding the accountability of UN peacekeeping forces, particularly when they are mandated either directly or indirectly. This accountability is negated when the mission of the peacekeeping forces is limited to implementing Chapter VI of the UN Charter, since their military character is absent and the use of force is therefore inconceivable. It should be noted that the use of force by peacekeeping forces is governed by several rules and principles, particularly the restriction of its use to the limits dictated by the rules of legitimate self-defense. This justifies the limited

political sciences, Vol. 03, issue 02, Public Policy and Public Service Improvement Laboratory in Algeria, Faculty of Law and Political Sciences, University of Shahid Hamma Lakhdar, El Oued, Algeria, 2019, p. 143.

²³ UN, Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, op. cit., pp. 5 – 8.

²⁴ Ibid., p. 16 and p. 26.

armament of these forces, preventing them from committing crimes or participating in hostilities that could undermine trust among parties to an armed conflict²⁵. However, the situation differs with regard to the physical scope of international humanitarian law, where armed conflict falls under the protection stipulated in Chapter VII of the Charter and is supervised by UN forces. This can lead to serious violations of international humanitarian law, which may constitute international crimes as defined in the Rome Statute of the International Criminal Court²⁶.

The Rome Statute enshrines the principle of equality before the law for those who commit international crimes, regardless of their status or position. This enables UN peacekeeping forces to be prosecuted. However, this principle has limitations, as it is often necessary to return to the individual's country of nationality to obtain a waiver of their immunity or privileges for extradition. Due to the diverse nationalities of individuals involved in peacekeeping operations, completing all stages of criminal prosecution against them is challenging²⁷.

The principle of complementarity, which prioritises state sovereignty over international criminal justice, is one of the most significant obstacles to the Court's exercise of jurisdiction over peacekeeping forces that commit international crimes. The court's complementary nature means that these forces can escape punishment or face a sham trial in their home countries' domestic courts²⁸.

There has been extensive legal debate over the accountability of individuals serving in United Nations peacekeeping forces. Initially, the disagreement centred on the extent to which these forces should be held criminally accountable, given that the idea of their committing violations was rejected on the basis that their mission is to establish peace and security in conflict zones. However, international practice has confirmed that these forces have been involved in numerous crimes while carrying out their duties on UN missions. This emphasises the necessity of criminal accountability, and considers violations committed by these forces to be a moral failing that must be rectified²⁹. The legal debate has since evolved into a discussion of whether

²⁵ For further, see: Mounira ABDULLAH AL-HASSAN, "Issues facing the UN Peacekeepers in their tasks", *Journal of Law Sciences*, Vol. 16, Issue 02, University Of Sharjah, UAE, 2019, p. 342

²⁶ Saad AL-AGGOUNE, op. cit., pp. 106-107.

²⁷ Ali LOUNICI, op. cit., pp. 139-141.

²⁸ Al-Amine BEN AISSA, "The obstacles facing ICC prosecution of the violators of the humanitarian international law", *Standards Journal*, Vol. 09, Issue 02, University Centre of Ahmed Ben Yahya al Wancharissi, Tissimsilt, Algeria, 2018, p. 94.

²⁹ Josephine D'URSO, op. cit., p. 15.

responsibility should be personal or collective. One school of thought maintains that responsibility is collective and is borne by all states participating in the formation of the UN force. Another school of thought places this responsibility on the unit commander, thereby holding the commander's nationality accountable. This latter view, however, contradicts the principle of neutrality inherent in the work of UN forces. Furthermore, the personal nature of criminal responsibility enshrined in the Rome Statute of the International Criminal Court complicates matters further³⁰.

Furthermore, the 2005 Zeid Report affirmed that peacekeeping forces are subject to the criminal and disciplinary jurisdiction of their countries of nationality, rather than that of the host state. The report also stated that the Secretary-General of the United Nations must be informed of all actions taken and results achieved³¹.

The report also emphasized the need for an international instrument that would remove the immunity of members of international intervention forces. This would enable the prosecution of individuals who commit crimes that violate international humanitarian law³².

Members of international peacekeeping forces are not held accountable because the United Nations lacks of direct jurisdiction over the military personnel affiliated with these forces. Penalties are therefore limited to repatriation, dismissal from the mission, or exclusion from future participation in UN forces. Furthermore, the immunity these individuals enjoy prevents them from being held accountable for violations committed while performing their duties at the national judicial level. This is particularly the case since responsibility for investigation and prosecution lies with the state of their nationality. Gathering sufficient evidence for conviction is difficult in such crimes, and victims are often afraid to report them³³.

The 2008 Montreux Declaration established a set of non-negotiable obligations for states that contract with private security companies when a member of their forces violates the rules of international humanitarian law. These obligations can be summarized as follows³⁴:

³⁰ Mounira ABDULLAH AL-HASSAN, op. cit., pp. 351-352.

³¹ UN, Letter dated 24 March 2005 from the Secretary-General to the President of the General Assembly, General Assembly, 59 session, 24 March 2005, A/59/710, p. 31.

³² Ibid., pp. 28 – 30.

³³ Josephine D'URSO, op.cit., p. 9.

³⁴ UN, Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, op. cit., pp. 7 – 10.

- The obligation to prosecute perpetrators of serious crimes.
- The obligation to issue arrest warrants for all accused, including principal perpetrators and those who ordered such crimes.
- Adherence to the principles of impartiality and equality, ensuring prosecution regardless of nationality in accordance with the principle of universal jurisdiction.
- The responsibility to implement international human rights obligations.

Furthermore, it is difficult to prove violations and crimes committed by these forces, especially when unit commanders are complicit. Evidence is often concealed due to the lengthy process of granting the court jurisdiction and initiating investigations. These investigations involve the host state, the perpetrator's country of origin, and the International Criminal Court, and are conducted through multiple channels. This can lead to conflicts and discrepancies that inevitably hinder the discovery of the truth and the establishment of criminal justice. Although international investigations have confirmed the involvement of numerous UN force members in international crimes, fragmented reporting and investigation procedures distributed among multiple authorities have prevented effective prosecution, particularly as evidence of their involvement in these crimes often fades over time³⁵.

The 2005 Zeid Report confirmed the ineffectiveness of the investigations and their lack of specialized expertise. The report emphasized the importance of establishing a permanent, independent investigative mechanism that includes a military law expert from each contributing state and encouraged the formation of military tribunals³⁶.

³⁵ For further, see Ibrahim Abderrahim SAADA, The scope of the criminal liability of UN Peacekeepers for sexual abuse and exploitation, Magister thesis in general law, Faculty of Las, University of the Middle East, Jordan, 2018, pp. 115-134.

³⁶ UN, Letter dated 24 March 2005 from the Secretary-General to the President of the General Assembly, op. cit., pp. 5 – 4 and pp. 14 – 17.

Conclusion

International efforts have sought to hold all perpetrators of international crimes accountable under international criminal law and prevent them from escaping punishment. However, this accountability cannot be applied to members of international intervention forces. This constitutes a legal and moral challenge at an international level, despite the progress made by the International Criminal Court in establishing individual criminal responsibility. Therefore, this study reveals a significant discrepancy between legal principles and international practices.

This study yielded several findings, which can be summarised as follows:

- The differing legal basis for the formation of international intervention forces, as defined in Chapters VI and VII of the UN Charter, contributes to variations in the nature and extent of the tasks assigned to these forces.
- The mandate mechanism raises legal and ethical concerns due to the delegation of responsibility for maintaining international peace and security to private security companies whose activities are driven by profit motives. This can lead to the exploitation of conflict zones as a primary source of commercial gain, particularly as it often results in irregular elements, such as mercenaries, being included within their ranks. This increases the rate of crimes committed by UN forces.
- The effectiveness of the International Criminal Court in prosecuting crimes committed by international intervention forces is limited due to the procedural and political constraints surrounding its jurisdiction. This is in contrast to the criminal protection afforded to these forces when the necessary eligibility criteria, such as membership and entitlement, are met.

In light of the findings, we have decided to present a set of recommendations to help find practical solutions to the problem of holding members of international intervention forces accountable for crimes committed while performing their duties. These recommendations are as follows:

- International intervention forces must undergo training courses that include an introduction to the rules of international humanitarian law, how to apply them, and how to ensure compliance.
- A legal framework must be established that includes strict oversight mechanisms for the activities of private security companies authorised to ensure peace and security in areas of armed conflict.
- A mechanism for cooperation between the International Criminal Court and the United Nations must be established to prosecute international intervention forces, regardless of their designation or the basis upon which their activities are founded.

- A committee should be formed within the International Criminal Court to receive complaints relating to crimes committed by members of international intervention forces. This committee should ensure the complainant's protection and the confidentiality of their information. It should carry out its duties alongside the Victims and Witnesses Unit and the Office of Public Counsel for Victims.
- The Rome Statute should be reviewed to close loopholes that allow for impunity, particularly those related to bilateral immunity agreements. Mechanisms should also be established to shield the Statute from direct political influence, thus ensuring the effective application of the principle of equality before the International Criminal Court.