

The Rule of Attribution for Peacekeepers Post-Dutch Supreme Court's Rulings on Mothers of Srebrenica in 2019: A Discourse on Presumptive v. Preventive Interpretation

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DOI: <https://doi.org/10.22304/pjih.v10n2.a4>

Submitted: June 6, 2023 | Accepted: August 13, 2023

Abstract

Peacekeeping operations have become an integral component of the United Nations in promoting global peace and security. Yet, as demands increase to hold peacekeepers accountable for their misdeeds, the legal principle of attribution within the framework of the law of responsibility remains ambiguous and difficult to define. Hence, this study aims to contribute to the discourse on the attribution of the Peacekeepers' conduct, especially on the presumptive v. preventive interpretation of Article 7 Draft Articles on Responsibility of International Organizations. Under the presumptive interpretation, the peacekeeper's action is presumed to be attributed to the UN; however, attribution can be rebutted if Troop Contributing States (TCS) exercise control over the peacekeepers. In contrast, preventive interpretation argues that attribution must be determined by which entity, TCS or the UN, has the power to prevent the alleged conduct. This study analyzed how the Dutch Supreme Court's rulings in 2019 approached the question of attribution toward the Dutch Battalion during the mission of UNPROFOR. The Supreme Court found that the action of the Dutch Battalion was attributable to the Netherlands since the Netherlands fulfills the elements of effective control as governed under Article 8 ARSIWA. Moreover, the Supreme Court rejected the preventive interpretation earlier endorsed in the Nuhanovic case. This study employed a normative juridical approach. This study argues that the Court's rulings on presumptive interpretation are aligned with the practices of the UN's peacekeepers and the intended purpose of Article 7 DARIO, which emphasizes attribution on factual consideration.

Keywords: attribution of conduct, presumptive and preventive interpretation, UN Peacekeeping Operation.

A. Introduction

Finding the most suitable standard of attribution in peacekeeping operations is a knotty issue that cannot be easily unraveled. The inherent complexity of peacekeeping operations arises from the fact that two distinct entities of international law, i.e., States and the United Nations (UN) are inevitably involved.

PADJADJARAN Journal of Law Volume 10 Number 2 Year 2023 [ISSN 2460-1543] [e-ISSN 2442-9325]

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Typically, peacekeeping missions rely on the deployment of troops contributed by States (TCS), who are then placed under the operational command of the UN. This practice has muddled the application of the rule of attribution since two separate entities of international law may potentially shoulder responsibility for the conduct of peacekeepers.¹

Article 7 of the Draft Articles on the Responsibility of International Organizations (DARIO),² introduced by the International Law Commission (ILC), recognizes the distinctiveness of peacekeeping missions as UN subsidiary organs imbued with the status of organs of their respective states.³ With an aim to disentangle the attribution quandary that arises from such a hybrid arrangement, the provision cogently explains that the pivotal inquiry for imputing responsibility revolves around who has effective control over the conduct. In this vein, Article 7 DARIO aims to identify the appropriate entity to which the conduct should be attributed rather than questioning the attributability of peacekeepers' actions.⁴

Interpreting effective control has proven to be a complex and nuanced topic in contemporary legal discourse. A prime illustration of this complexity is demonstrated in several court judgments. In *Behrami*, the European Court of Human Rights applied the 'ultimate authority and control' test to determine the attribution of the Kosovo Force's conduct to the North Atlantic Treaty Organization or the UN.⁵ Furthermore, in *Nuhanovic*, the Dutch Appeal Court referenced Article 7 DARIO to discern whether the Netherlands exerted effective control over the United Nations Protection Force (UNPROFOR) actions. The Appeal Court expanded the interpretation of effective control to encompass the 'power to prevent' standard put forth by Tom Dannenbaum.⁶ Notably, the Dutch Supreme Court in the *Mothers of Srebrenica* case upheld the same provision as articulated in *Nuhanovic*, albeit relying heavily on Article 8 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) and rebuffing the *Nuhanovic* interpretation pertaining to the 'power to prevent' criterion under the notion effective control.⁷

The discourse on attribution has attracted scholars to explore these intricate issues. In 2019, Yohei Okada provided a classification regarding the discourse, namely the presumptive and preventive approaches. Under the presumptive

¹ Aurel Sari, "UN Peacekeeping Operations and Article 7 ARIO: The Missing Link," *International Organizations Law Review* 9, no. 1 (2012): 77, <https://doi.org/10.1163/15723747-00901013>; Lorenzo Gasbarri, *The Concept of an International Organization in International Law* (Oxford: Oxford University Press, 2021), 192-197.

² Article 7 of Draft Articles on Responsibility of International Organization (DARIO).

³ International Law Commission, Draft Articles on the Responsibility of International Organizations, with Commentaries, A/66/10 (DARIO Commentary), 56.

⁴ DARIO Commentary, 57.

⁵ European Court of Human Rights (ECtHR), *Behrami and Behrami v. France and Saramati v. France, Germany, and Norway*, Decision (Grand Chamber), 2 May 2000, para. 140-141; Kjetil Mujezinović Larsen, "Attribution of Conduct in Peace Operations: The 'Ultimate Authority and Control' Test," *The European Journal of International Law* 19, no. 3 (2008): 520-521.

⁶ Appeal Court, *The Netherland v. Nuhanovic* (Judgment of 5 July 2011), para. 5.9.

⁷ Article 8 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA); Supreme Court, *Mothers of Srebrenica Association v. The Netherlands* (Judgment of 19 July 2019), para. 3.5.3.

approach, Okada concluded that the conduct of peacekeepers should be presumed to be attributable to the UN unless the TCS directs or controls the peacekeepers' conduct. Further, the preventive approach contested the presumptive approach, where the attribution shall be determined by which entity, the UN or TCS, possesses the capacity to prevent the peacekeepers' misconduct. However, Okada had not discussed the Dutch Supreme Court judgment in Mothers of Srebrenica, which emphasize the presumptive approach.⁸

In further contributions, Cedric Ryngaert thoroughly addressed the Dutch Supreme Court's application of Article 8 ARSIWA in Mothers of Srebrenica and how it can be justified under international law.⁹ Nonetheless, Ryngaert has not addressed the Supreme Court's rejection of the preventive approach and how the court took the view that peacekeepers' action is presumed to be attributed to the UN unless the TCS possesses effective control over the act.

Through these studies, this study aims to scrutinize the Dutch Supreme Court's interpretation of Article 7 DARIO, particularly its rejection of the preventive approach. Furthermore, this study confines the discussion on the rule of attribution under DARIO and ARSIWA. In principle, this study supports the court's adoption of the presumptive approach under Article 7 DARIO, which presumes peacekeepers' acts to be attributable unless the TCS exerts effective control as defined in Article 8 ARSIWA. Furthermore, this study concurs with the court's dismissal of the preventive approach, which interprets Article 7 DARIO as identifying which entity can prevent peacekeepers' misconduct.

The study's discussion will be segmented into three parts. First, the current framework of international organization responsibility under DARIO. Second, the judgment of the Mothers of Srebrenica. Third, an analysis of the judgment in Mothers of Srebrenica.

B. Attributing the Conduct of UN Peacekeeping Operations Under DARIO

International Organizations (IO) are bestowed with an international legal personality, enabling them to assume rights and obligations under international law, including the responsibility for internationally wrongful acts.¹⁰ However, the

⁸ Supreme Court, Mothers of Srebrenica Association v. The Netherlands (Judgment of 19 July 2019), para. 3.1.1-3.2; Yohei Okada, "Effective Control Test at The Interface Between the Law of International Responsibility and The Law of International Organizations: Managing Concerns Over the Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," *Leiden Journal of International Law* 32, no. 2 (2019): 1-17, <https://doi.org/10.1017/S0922156519000062>.

⁹ Cedric Ryngaert, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations," *Utrecht Journal of International and European Law* 36, no. 2 (2021): 171-177, <https://doi.org/10.5334/ujiel.546>. See also Cedric Ryngaert and Otto Spijkers, "The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in Mothers of Srebrenica (2019)," *Netherlands International Law Review* 66, no. 3 (2019): 544-545, <https://doi.org/10.1007/s40802-019-00149-z>.

¹⁰ Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge: Cambridge University Press, 2002), 52-57. See Also ICJ, Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion of 11 April 1949), 9.

question of responsibility for IO is intricate, especially in the context of peacekeeping missions. Unlike States, where they can be treated as a 'single entity,' the peacekeeping operation heavily relied on the willingness of the member states to provide its contingents to the UN.¹¹ Thus, it is not surprising if their actions often involve their member states, which further complicates to whom the responsibility shall be assigned. Under Article 4 DARIO,¹² the formulation to invoke IO's responsibility resembles Article 2 ARSIWA,¹³ where attribution and internationally wrongful act must exist.¹⁴ Similarly, other modes of attribution under DARIO often reflect the current governance stipulated under Article 2 ARSIWA. However, it is pertinent to note that some rule of attribution requires a different threshold.¹⁵

This study will limit the discussion to the rule of attribution, namely to determine how the conduct of an entity can be attributed to the subject of international law, in particular IO. Two modes of attributions are relevant to be discussed. First, attribution based on institutional links, where attribution is established if the author of the conduct performs the function of a State or IO.¹⁶ Second, attribution based on factual links, where attribution is established if there exists instruction, direction, or control from a State or IO to the author of the conduct.¹⁷

1. Attribution Based on Article 6 DARIO

In essence, peacekeeping operations are defined as consented military intervention whose purpose encompasses multidimensional aspects, such as conflict management, facilitation of peaceful transition, civilian protection during armed conflict, or assistance to the State in peace transition.¹⁸ Peacekeeping operations have evolved into four distinct categories: UN-led peacekeeping operations, UN-authorized peacekeeping operations, UN-recognized operations, and non-UN peacekeeping operations. This study will focus on UN-led peacekeeping operations, whereby the UN authorizes and controls peacekeeping missions.¹⁹

¹¹ Jan Klabbers.

¹² Article 4 of DARIO, "There is an internationally wrongful act of an international organization when conduct consisting of an action or omission: (a) is attributable to that organization under international law, and (b) constitutes a breach of an international obligation of that organization."

¹³ Article 2 of ARSIWA, "There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State."

¹⁴ Mirka Moldner, "Responsibility of International Organizations - Introducing the ILC's DARIO," *Max Planck Yearbook of United Nations Law* 16 (2012): 290.

¹⁵ DARIO Commentary, 46.

¹⁶ André Nollkaemper and Ilias Plakokefalos, *Principles of Shared Responsibility in International Law: An Appraisal of the State of the Art* (Cambridge: Cambridge University Press, 2014), 65; Carlo De Stefano, *Attribution in International Law and Arbitration* (Oxford: Oxford University Press, 2020), 27; Article 4 ARSIWA; Article 6 DARIO.

¹⁷ André Nollkaemper and Ilias Plakokefalos, 65; Article 8 ARSIWA.

¹⁸ Jacob Katz (et.al.), *The Oxford Handbook of International Organizations* (Oxford: Oxford University Press, 2016), 191.

¹⁹ Joachim A. Koops (et.al.), *The Oxford Handbook of United Nations Peacekeeping Operations* (Oxford: Oxford University Press, 2015), 13.

To date, most peacekeeping operations were authorized under the regime of the United Nations Charter (UN Charter), primarily to support the function of the Security Council in fulfilling its mandate to maintain peace and security.²⁰ Consequently, pursuant to Articles 7 and 29 of the UN Charter,²¹ UN Peacekeeping Missions would be classified as the UN's subsidiary organ.²² The mandate given to peacekeeping operations has evolved from a traditional generation, which prohibits using force by peacekeepers, unless in self-defense, to a more robust mission, which allows peacekeepers to protect civilians through all necessary means, including the use of force.²³ The changes in the nature of peacekeeping missions also increase the demand to hold them responsible for their wrongdoings. Thus, the question of attribution becomes inevitable.

At first sight, attributing the conduct of peacekeepers would lead to Article 6 DARIO,²⁴ which attributes the conduct of peacekeepers as the UN's subsidiary organ.²⁵ As pointed out by the UN, "forces that are placed at the disposal of the UN are transformed into its subsidiary organ, which entails the responsibility of the organizations."²⁶ In this regard, the logic of Article 6 DARIO resembles Article 4 ARSIWA,²⁷ which found attribution based on characterizing an entity as a State Organ.²⁸ This view was applied in the *Behrami*, where the European Court of Human Rights (ECtHR) assigned responsibility to the UN for the failure to disarm cluster bombs since the UN authorized the United Nations Interim Administration Mission in Kosovo (UNMIK) through the United Nations Security Council Resolution (UNSC Resolution) 1244.²⁹

However, this view has become a subject of scholarly debate, mainly due to the command-and-control structure of peacekeeping missions involving national contingents from TCS.³⁰ Inevitably, Peacekeeping Operations would be under two

²⁰ J. Samuel Barkin, *International Organization Theories and Institutions* (New York: Palgrave Macmillan, 2023), 88; Chapter VII of the United Nations Charter.

²¹ Article 7 (2) of the UN Charter; Article 29 of the UN Charter.

²² Boris Kondoch, *International Peacekeeping* (New York: Routledge, 2016), 73.

²³ Peter Nadin, *The Use of Force in UN Peacekeeping* (New York: Routledge, 2018), 147-148; Dennis C. Jett, *Why Peacekeeping Fails* (Switzerland: Palgrave Macmillan, 2019), 45.

²⁴ Article 6 of DARIO.

²⁵ Paolo Palchetti, "The Allocation of Responsibility for Internationally Wrongful Acts Committed in the Course of Multinational Operations," *International Review of the Red Cross* 95, no. 891/892 (2013): 729.

²⁶ Paolo Palchetti, "International Responsibility for Conduct of UN Peacekeeping Forces: The Question of Attribution," *Sequencia (Florianopolis)* 70, no. 1 (2015): 29-30, <https://doi.org/10.1007/s40802-015-0027-9>.

²⁷ Article 4 of ARSIWA.

²⁸ DARIO Commentary, 55.

²⁹ European Court of Human Rights (ECtHR), *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, Decision (Grand Chamber), 2 May 2007, 143; Paolo Palchetti, "The Allocation of Responsibility for Internationally Wrongful Acts Committed in the Course of Multinational Operations," 729-730.

³⁰ DARIO Commentary, 56; Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Oregon: Hart Publishing, 2004), 67; Paolo Palchetti, "International Responsibility for Conduct of UN Peacekeeping Forces: The Question of Attribution," 730; Cedric Ryngaert, "Apportioning Responsibility Between the UN and Member States in UN Peace-Support Operations: An Inquiry Into the Application of the 'Effective Control' Standard After *Behrami*," *Israel Law Review* 45, no. 1 (2012): 3, <https://doi.org/10.1017/S0021223711000070>; Charuka Ekanayake and Susan Harris Rimmer, "Applying

different conditions. First, they are afforded the status of a UN subsidiary organ. Second, the national contingents are still perceived as organs of their respective States.³¹ These conditions suggest that the application of Article 6 of DARIO may be inconsistent with the factual circumstances of peacekeeping missions, where States may intervene in the UN's command and alter the control over their national contingents.³² As observed by Nina Mileva, peacekeeping missions might get affected by each TCS' sovereign agenda³³ since the execution of Chapter VII of the UN Charter would heavily depend on the TCS's willingness to send troops for peacekeeping missions.³⁴

Similarly, the ILC found Article 6 DARIO to be indecisive in answering the question of attribution since not all peacekeeper's operations are performed within the control of the UN. For example, in the United Nations Operation in Somalia II, the ILC found.

*"The Force Commander of UNOSOM II was not in effective control of several national contingents which, in varying degrees, persisted in seeking orders from their home authorities before executing orders of the Forces Command."*³⁵

Thus, ILC concluded that Article 6 DARIO is unsuitable for peacekeeping operations.³⁶ Instead, the problem of attribution should be addressed by finding which entity possesses effective control over the peacekeepers' conduct.³⁷

2. Attribution Based on Article 7 DARIO

ILC dedicated Article 7 DARIO to addressing the issue of attribution to the organ of a State that is placed at the disposal of an IO.³⁸ According to the ILC, Article 7 DARIO governs the attribution of organs that are not fully seconded to IO, such as State military contingents placed to the United Nations for peacekeeping operations.³⁹ Under Article 7 DARIO, an act of States Organs that are placed at the disposal of another IO can only be attributed to IO if the organization exercises effective control over the conduct.⁴⁰

Effective Control to the Conduct of UN Forces," *International Organizations Law Review* 15, no. 1 (2018): 22, <https://doi.org/10.1163/15723747-01501002>.

³¹ DARIO Commentary, 56; Paolo Palchetti, "The Allocation of Responsibility for Internationally Wrongful Acts Committed in the Course of Multinational Operations," 730-731.

³² Charuka Ekanayake and Susan Harris Rimmer, "Applying Effective Control to the Conduct of UN Forces," 22.

³³ Nina Mileva, "State Responsibility in Peacekeeping: The Effect of Responsibility on Future Contributions," *Utrecht Law Review* 12, no. 1 (2016): 122, <http://doi.org/10.18352/ulr.328>.

³⁴ Nina Mileva, 122; Aurel Sari, "UN Peacekeeping Operations and Article 7 ARI0: The Missing Link," 77.

³⁵ DARIO Commentary, 58.

³⁶ DARIO Commentary, 56.

³⁷ DARIO Commentary, 56-57.

³⁸ DARIO Commentary, 56.

³⁹ DARIO Commentary.

⁴⁰ Article 7 DARIO; Aurel Sari, "UN Peacekeeping Operations and Article 7 ARI0: The Missing Link," 78.

Unfortunately, ILC does not define 'effective control' under the notion, except to mention several judgments and practices regarding peacekeeping missions.⁴¹ The discourse and practice on this topic have evolved into two contesting ideas: the presumptive and preventive approaches.⁴²

a. Presumptive Approach

The presumptive approach construes every act of peacekeepers to be attributable to the UN, but the presumption can be rebutted.⁴³ In this regard, the presumptive approach found its roots in the nature of peacekeeping operations which assumes the seconded troops to be transformed into the subsidiary organ of the UN without ruling out the possibility that TCS may intervene in its operations.⁴⁴ As argued by Aurel Sari, in cases with dual institutional conditions, the key factor in determining attribution is how the IO and the States perceive the status of the seconded organs.⁴⁵ If the UN and TCS had agreed on the formal incorporation resulted in the status of the military contingent as part of the UN's subsidiary body, then any conduct of the national contingent shall be presumed to be attributable to the IO since the military contingent would perform on behalf of the UN.⁴⁶ However, this presumption can be rebutted if States control the conduct of their seconded organ, which deprives the UN's control over the said act.⁴⁷

In *Nuhanovic v. the State of the Netherlands*, the district court adopted a presumptive approach to address the claim brought by Hasan Nuhanovic against the Netherlands. The crux of the matter lies in the alleged failure of the Netherlands to prevent the Srebrenica massacre in 1995 while deploying its Battalion under the auspices of UNPROFOR. The court has ascertained that the actions of UNPROFOR can be presumed to be attributed to the UN, as no evidence has emerged indicating any direction or instruction from the Netherlands in relation to the impugned conduct.⁴⁸

⁴¹ DARIO Commentary, 56-60.

⁴² Yohei Okada, "Effective Control Test at The Interface Between the Law of International Responsibility and the Law of International Organizations: Managing Concerns Over the Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," *Leiden Journal of International Law* 32, no. 2 (2019): 1, <https://doi.org/10.1017/S0922156519000062>.

⁴³ Samantha Besson, *Theories of International Responsibility Law* (Cambridge: Cambridge University Press, 2022), 154-155; Yohei Okada, "What's Wrong with Behrami and Saramati? Revisiting the Dichotomy between UN Peacekeeping and UN-authorized Operations in Terms of Attribution," *Journal of Conflict & Security Law* 24, no. 2 (2019): 352, <https://doi.org/10.1093/jcsl/krz003>.

⁴⁴ Aurel Sari, "UN Peacekeeping Operations and Article 7 ARI: The Missing Link," 80.

⁴⁵ Aurel Sari, 82-83; Paolo Palchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," *Netherland International Law Review* 62, no. 2 (2015): 282, <https://doi.org/10.1007/s40802-015-0027-9>.

⁴⁶ Aurel Sari, 82-83.

⁴⁷ Aurel Sari, 82-83; Samantha Besson, *Theories of International Responsibility Law* (Cambridge: Cambridge University Press, 2022), 154-155.

⁴⁸ *Nuhanovic*, Court of District Judgement, para. 4.14.1-4.14.5; Yohei Okada, "Effective Control Test at the Interface Between the Law of International Responsibility and the Law of International Organizations: Managing Concerns over the Attribution of UN Peacekeepers' conduct to Troop-Contributing Nations," 3.

Another application of the presumptive approach can be seen from the decision of the Court of First Instance in the case of *Mukeshimana-Ngulinzira v. Belgian State*. The case concerns the widespread ethnic cleansing in Rwanda in 1994, where Belgium decided to evacuate their troops and expatriated nationals, which left 2000 refugees vulnerable to immediate death.⁴⁹ Firstly, the court acknowledges that the action of the United Nations Assistance Mission for Rwanda shall be presumed to be attributable to the UN. However, in further investigations, the court found that the conduct of the Belgian contingent was attributable to Belgium since Belgium instructed its contingents to withdraw from the peacekeeping operations.⁵⁰ In response to the decision of the Court of First Instance, the Appeal Court reversed the decision and concluded that the decision to withdraw was attributable to the UN since the decision was concluded with UNAMID.⁵¹ Furthermore, the Belgium battalion, which was placed under the UNAMID, did not obey any instructions from Belgium; instead, it chose to take the UN's direction during the circumstances ruling at that time. Therefore, the absence of control by Belgium renders the act not attributable to it.⁵²

b. Preventive Approach

The preventive approach was a scholarly initiative proposed by Tom Dannenbaum.⁵³ This concept was developed to expand the scope of the UN and TCS accountability for peacekeepers' actions, particularly in light of the limitations of the existing judicial mechanism, which is impeded by the UN's immunity and the lack of an international tribunal for addressing UN misconduct.⁵⁴ The main hurdles to seeking responsibility from the peacekeepers can be seen in the District Court in *Mothers of Srebrenica*. In the proceedings, the Court found that it has no jurisdiction over the UN, making it impossible for victims to demand responsibility from the UN.⁵⁵

In principle, the preventive approach defines effective control as control that does not require TCS or UN to issue an instruction to the peacekeepers. Rather, it is sufficient if TCS or UN fails to prevent unlawful conduct of the peacekeepers within

⁴⁹ Oxford Public International Law, *Mukeshimana-Ngulinzira and ors v Belgium and ors*, First Instance Judgment, RG No. 04/4807/A, 07/15547/A, ILDC 1604 (BE 2010), 8th December 2010, Belgium, <https://opil.ouplaw.com/display/10.1093/law-ildc/1604be10.case.1/law-ildc-1604be10>.

⁵⁰ Tom Ruys, "Mukeshimana-Ngulinzira and Others v. Belgium and Others," *American Journal of International Law* 114, no. 2 (2020): 270-271, <https://doi.org/10.1017/ajil.2020.7>.

⁵¹ Tom Ruys.

⁵² Tom Ruys.

⁵³ Tom Dannenbaum, "Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers," *Harvard International Law Journal* 51, no. 1 (2010): 113; Yohei Okada, "Effective Control Test at The Interface Between The Law of International Responsibility and The Law of International Organizations: Managing Concerns Over The Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," 9.

⁵⁴ Tom Dannenbaum, 114, 116; Malcolm Shaw, *International Law* 6th Edition (Cambridge: Cambridge University Press, 2008), 776.

⁵⁵ District Court, *Mothers of Srebrenica v. The Netherlands* (Judgment of 16 July 2014), para. 5.13.

their respective spheres of discretion.⁵⁶ Dannenbaum contends preventive interpretation to be consistent with ILC's intention since the TCS' retained some control over its troops, such as disciplinary punishment, criminal matters, or authority to withdraw its contingents.⁵⁷ Consequently, the failure to prevent peacekeepers' misconduct would entail the responsibility of TCS.⁵⁸ This also applies to the UN's failure to prevent the peacekeepers' conduct within its sphere of discretion.

In Nuhanovic, the Dutch Court of Appeal adopted the preventive approach, whose interpretation was later supported by the Supreme Court.⁵⁹ The Appeal Court ascertained that effective control does not require TCS or UN to issue direction to the seconded troops; rather, it is sufficient if they have the power to prevent the alleged wrongdoings.⁶⁰ Applying the rule to the facts of the case, the Court of Appeal found that the Netherlands retains authority over personal and disciplinary matters over the Dutch Battalion. Moreover, the Netherlands could decide when the Dutch Battalion should be withdrawn from the area. Thus, this situation indicates that the Netherlands could theoretically prevent the peacekeepers' misconduct.⁶¹

C. Mothers of Srebrenica and the Question of Attribution

The Mothers of Srebrenica case refers to a legal proceeding initiated by a Dutch foundation called the Mothers of Srebrenica, which represents the surviving relatives of victims of the fall of Srebrenica during the conflict in the former Yugoslavia in 1995. The claim was brought against the Netherlands upon the involvement of the Dutch Battalion in the UNPROFOR. UNPROFOR was established based on UNSC Resolution 743. According to UNSC Resolution 819, UNPROFOR was mandated to take necessary measures to protect the territory of Srebrenica, which was declared a safe area.⁶² On 6 July 1995, the Bosnian-Serbian launched a raid against the safe area; the attack incapacitated UNPROFOR's capability to protect the civilians therein. Therefore, on July 12, 1995, UNPROFOR evacuated the civilians from the area controlled by the Bosnian-Serbian army. Unfortunately, 7.000 men

⁵⁶ Tom Dannenbaum, "Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers," 114.

⁵⁷ DARIO Commentary, 56.

⁵⁸ Tom Dannenbaum, 158.

⁵⁹ Appeal Court of the Netherlands, *The Netherlands v. Nuhanovic* (Judgment of 6 September 2013), para. 5.9; Supreme Court of the Netherlands, *The Netherlands v. Nuhanovic* (Judgment of 6 September 2013), para. 3.11.3.

⁶⁰ Supreme Court of the Netherlands, *The Netherlands v. Nuhanovic* (Judgment of 6 September 2013), para. 3.11.3; Appeal Court of the Netherlands, *The Netherlands v. Nuhanovic* (Judgment of 5 July 2011), para. 5.9.

⁶¹ Appeal Court of the Netherlands, *The Netherlands v. Nuhanovic* (Judgment of 6 September 2013), 5.18; Chimdessa Fekadu Tsega, "The Responsibility of International Organizations for Wrongful Acts in Peacekeeping Operations: The Case for Dual Attributions," *Indian Journal of International Law* 59, no. 1 (2020): 315-316, <https://dx.doi.org/10.2139/ssrn.4078517>.

⁶² United Nations Security Council Resolution 819 (1993); United Nations Security Council Resolution 743 (1992).

were killed as they were separated from the evacuation group by the Bosnian-Serbian army and could not seek evacuation.⁶³

The Mothers of Srebrenica initially predicated their claim against the Netherlands on Article 6:162 of the Dutch Civil Code (*Burgerlijk Wetboek*). However, the court, as validated by the Supreme Court's verdict, held the claim to be anchored in the Dutch Government's positive obligation under Articles 2 and 3 of the European Convention on Human Rights, which pertain to the right to life and physical integrity.⁶⁴ In light of these circumstances, this study would discuss how each court in the Mothers of Srebrenica applied the law of attribution to the alleged wrongdoings rather than the existence of internationally wrongful acts.

1. District Court

In the District Court Judgment in 2014, the District Court found that the Netherlands is guilty of the acts taken by the Dutch Battalion in the massacre in Srebrenica in 1995.⁶⁵ The court's approach is similar to the Supreme Court's interpretation in Nuhanovic, which recognizes Article 7 DARIO as the main basis for determining the attribution of Dutch Battalion conduct.⁶⁶ In this regard, the District Court highlighted the need to take a factual consideration to find which entity possesses effective control. In addition, the court also pronounced that the requirement of effective control does not require States to deliver instruction to the Dutch Battalion; rather, it is sufficient if States had it in their power to prevent the actions concerned.⁶⁷

2. Appeal Court

In the Appeal Court, the Netherlands was found to be responsible for the Dutch Battalion's conduct. However, as differs from the District Court approach, the Court of Appeal did not refer to the preventive interpretation as endorsed by the District Court.⁶⁸ It is argued that the retained authority of TCS, such as disciplinary measures, recruitment, selection, or preparation, does not change the standard of attribution, namely, who possesses effective control during the circumstances ruling at the time.⁶⁹ Moreover, the Court of Appeal also observed that any *ultra vires* act taken by

⁶³ District Court of the Netherlands, Mothers of Srebrenica Association v. The Netherlands (Judgment of 16 July 2014) para. 2.14-2.32.

⁶⁴ Supreme Court, Mothers of Srebrenica Association v. The Netherlands (Judgment of 19 July 2019), para. 4.2.2; Aulia Rosa Nasution, "The Crime of Genocide on the Rohingya Ethnic in Myanmar from the Perspective of International Law and Human Rights," *Padjadjaran Journal of Law* 5, no. 1 (2018): 193, <http://dx.doi.org/10.22304/pjih.v5n1.a10>.

⁶⁵ Paolo Alchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," 280.

⁶⁶ District Court, Mothers of Srebrenica v. The Netherlands (Judgment of 16 July 2014), para. 4.33-4.35.

⁶⁷ District Court, Mothers of Srebrenica v. The Netherlands, para. 4.46.

⁶⁸ Yohei Okada, "Effective Control Test at The Interface Between the Law of International Responsibility and The Law of International Organizations: Managing Concerns Over the Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," 287.

⁶⁹ Appeal Court, Mothers of Srebrenica v. The Netherlands (Judgment of 27 June 2017), para. 15.3; Yohei Okada, "Effective Control Test at The Interface Between the Law of International Responsibility and The Law of

peacekeepers should be presumed to be attributable to the UN unless the TCS intervenes UN's control over the peacekeepers.⁷⁰ Applying these standards to the case, the Court of Appeal considered Netherlands' involvement in decision-making with UNPROFOR as evidence of control over the Dutch Battalion.

3. Supreme Court

In assessing attribution, the Supreme Court did not refer to the 'power-to-prevent' doctrine in interpreting what 'effective control' is under DARIO. Rather, as observed by Cedric Ryngaert, "...the Dutch courts opted instead for a rather difficult combination of Article 8 DARS and Article 7 DARIO...".⁷¹ Furthermore, the Supreme Court explicitly rejected the 'power to prevent standard, in which it argued, "... effective control can also be evident from the circumstance that the State was in such a position that it had the power to prevent the specific act or acts of Dutchbat, this is also based on an incorrect interpretation of the law..."⁷²

D. Analysis

After describing the current debate on Article 7 DARIO and the factual and legal consideration of the Dutch Courts in Mothers of Srebrenica, this section will analyze (1) the Supreme Court's approach in interpreting Article 7 DARIO and (2) the application of Article 8 ARSIWA in attributing the conduct of Dutch Battalion to the Netherlands.

1. Assessing the Court's Interpretation of Article 7 DARIO in Mothers of Srebrenica

To summarize the discussions above, presumptive interpretation attempts to find the meaning of attribution by presuming that every act of peacekeeping operations is attributable to the UN. However, this presumption can be rebutted if the forces are under the control of the TCS, which renders the UN to have no control over the conduct.⁷³ Several judgments, such as the Dutch district court in Nuhanovic and Mukeshima, have adopted the presumptive approach.⁷⁴ However, the presumptive approach was contested by the preventive approach. The Court of Appeal in

International Organizations: Managing Concerns Over the Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," 13-14.

⁷⁰ Appeal Court, Mothers of Srebrenica v. The Netherlands, para. 15.2; Yohei Okada, "Effective Control Test at The Interface Between the Law of International Responsibility and The Law of International Organizations: Managing Concerns Over the Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," 14-15.

⁷¹ Cedric Ryngaert and Otto Spijkers, "The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in Mothers of Srebrenica (2019)," 541.

⁷² Supreme Court, Mothers of Srebrenica v. The Netherlands, para. 3.5.3.

⁷³ Yohei Okada, "Effective Control Test at The Interface Between the Law of International Responsibility and The Law of International Organizations: Managing Concerns Over The Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," 2-3.

⁷⁴ Nuhanovic, District Court, para. 4.9-4.15; Mukeshimana-Ngulinzira v. Belgian State (Judgment of the Court of First Instance of Brussels of 8 December 2010), para. 38.

Nuhanovic followed the preventive approach,⁷⁵ which upheld that effective control does not need direction or instruction by TCS or UN; rather, it is sufficient if either entity has the power to prevent the alleged conduct.⁷⁶ In 2019, the Dutch Supreme Court in *Mothers of Srebrenica* chose to pursue a different means of interpretation to Article 7 DARIO. They returned to the presumptive approach rather than continuing the preventive interpretation from the past precedence.

In response to those contesting ideas, this study argues that (1) the presumptive approach is suitable to the framework of the DARIO and (2) the application of the presumptive approach is consistent with the objectives of Article 7 DARIO.

First, the logic of Article 7 DARIO corresponds to Article 6 ARSIWA, which governs the rule of attribution for organs that are placed at the disposal of a State by another State.⁷⁷ Using the same logic as proposed under Article 6 ARSIWA, if a seconded organ performs the function of an IO, the conduct of that organ is, in principle, attributable to the UN, even if TCS retains some degree of authority over the seconded organ.⁷⁸ However, this presumption can be rebutted if the TCS exercises control over its national contingents, as it would deprive the UN's control over the conduct.⁷⁹ This interpretation is consistent with ILC's work on Article 7 DARIO, where the placement of an organ in another organization would imply that the organ would perform on behalf of the IO, thus providing a basis for presuming the act to be attributable to the organization.⁸⁰ Indeed, Article 7 DARIO stipulates that attribution can be established if the IO possesses effective control over the conduct, which does not use the word 'presumption' within the provision. However, it is pertinent to note that the ILC did not intend to define 'effective control' as governed under Article 8 ARSIWA. Rather, the term 'effective control' under Article 7 DARIO needs to be assessed in light of the institutional structure of the seconded organ and the receiving IO. By performing the organization's function, it is sufficient to demonstrate that the organization possesses control over the conduct.⁸¹

In contrast, the source of the preventive approach is unfounded under the framework of DARIO. As argued by Yohei Okada, Dannenbaum's reliance on the TCS'

⁷⁵ Nuhanovic, Court of Appeal Judgment, para 5.9; Nuhanovic, Supreme Court, para. 3.11.3.

⁷⁶ Nuhanovic, Court of Appeal Judgment, para 5.9.; Nuhanovic, Supreme Court, para. 3.11.3.

⁷⁷ Paolo Palchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," 284.

⁷⁸ Giorgio Gaja, "Responsibility of International Organizations, Document A/CN.4/541," (Second Report on Responsibility of International Organizations, 2014), 13-14; Paolo Palchetti, "International Responsibility for Conduct of UN Peace-keeping Forces: The Question of Attribution," *Sequência (Florianópolis)* 70, (2014): 35-42; Paolo Palchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," 285.

⁷⁹ Yohei Okada, 4-6; Cedric Ryngaert and Otto Spijkers, "The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in *Mothers of Srebrenica* (2019)," 540; Paolo Palchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," 283.

⁸⁰ Paolo Palchetti, "International Responsibility for Conduct of UN Peace-keeping Forces: The Question of Attribution," 31.

⁸¹ Paolo Palchetti, 38.

retained authority, such as personnel, disciplinary, and criminal matters over the contingents, is incorrect.⁸² ILC acknowledges that TCS may retain some aspect of control over its contingents. However, it does not mean that the act of peacekeepers is attributable to the TCS solely on the hypothetical ground that they could prevent the conduct due to those retained authorities.⁸³ Moreover, ILC has no intention to place 'power retention of TCS' as the standard for attributing the peacekeepers' conduct. Rather, the ILC Commentary illustrated the power retained by TCS as an example that a State shall be responsible if they fail to exercise the power that they have to punish any violations that the peacekeepers did.⁸⁴ The ILC Commentary refers to one practice regarding Article 8(1) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁸⁵ Under the provision, State Party must penalize any possession or trade of the prohibited specimens under Article 8 (1) CITES.⁸⁶ Thus, ILC's commentary indicates that the retention of power was meant to incur the responsibility of the State Party if it failed to perform its obligations, showing that it is not intended to be a decisive factor in determining attribution.⁸⁷

Furthermore, it is worth noting that the obligation under international law differs from finding a link between the author of the conduct to the TCS. The latter is related to the question of whether there exist violations of international law. The former is related to the question of attribution. Under the current law of responsibility, a subject of international law can only be held responsible if an entity's conduct is attributable to the subject of international law and a breach of obligations exists. Whereas, under the preventive approach, as Okada argued, "*How can we identify the State as a person bearing the obligation to prevent harmful conduct without tracing a functional link?*"⁸⁸

Second, regarding the application of the law. The preventive approach would impose a broad application regarding the State's or UN's ability to prevent misconduct. As argued by Dannenbaum, effective control in the sense of a preventive approach would hold TCS or the UN responsible if they can effectively prevent the abuse in question.⁸⁹ However, this approach would hold TCS responsible for every conduct of its contingents since, in every possible scenario, TCS has the

⁸² Yohei Okada, "Effective Control Test at The Interface Between the Law of International Responsibility and The Law of International Organizations: Managing Concerns Over the Attribution of UN Peacekeepers' Conduct to Troop-Contributing Nations," 10.

⁸³ Paolo Alchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," 287-289.

⁸⁴ Yohei Okada, 10.

⁸⁵ Article VIII (1) Convention on International Trade in Endangered Species of Wild Fauna and Flora.

⁸⁶ DARIO Commentary, 57; Yohei Okada, 10.

⁸⁷ Yohei Okada.

⁸⁸ Yohei Okada.

⁸⁹ Tom Dannenbaum, "Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers," 158.

authority to send orders or withdraw its contingents.⁹⁰ By this line of reasoning, the preventive approach would be inconsistent with the purpose of Article 7 DARIO, which requires effective control to be assessed from factual consideration.⁹¹ Whereas the preventive approach broadens the notion of control to include the hypothetical ability of TCS and the UN during the peacekeeping missions.⁹²

To conclude, this study argues that the Supreme Court's interpretation in upholding the presumptive approach is aligned with the purpose of Article 7 DARIO, where the act of the seconded organ is deemed as the conduct of the organization unless the TCS directed the conduct of the seconded organ act.⁹³ Lastly, the Supreme Court's rejection of the power to prevent standards is justified. This is because the preventive interpretation would deviate from the purpose of Article 7 DARIO, which requires a consideration of institutional links and factual circumstances of the UN Peacekeeping Missions.

2. **Attributing the Conduct of the Dutch Battalion to the Netherlands under Article 8 ARSIWA**

As illustrated earlier, the Supreme Court's in *Mothers of Srebrenica* attributed the conduct of the Dutch Battalion to the Netherlands by relying on Article 8 ARSIWA and not Article 7 DARIO. Cedric Ryngaert argued that the interpretation of the Supreme Court is justified since the application of DARIO is intended to attribute certain conduct to IO and not to States.⁹⁴ It is evident from the literal wording of Article 7 DARIO, "...The conduct of an organ of a State....that is placed at the disposal of another IO shall be considered under international law an act of the latter organization *if the organization exercises effective control over that conduct.*" It implies that the literal meaning of Article 7 DARIO only stipulates that an act can only be attributed if the IO possesses control over the act. However, it cannot be inferred that the absence of control by the IO would automatically attribute the conduct to the State.⁹⁵

Furthermore, the Supreme Court's application of Article 8 ARSIWA also received a diverse response. In Nataša Nedeski's work, Nedeski argued that the application of Article 8 ARSIWA applies to the conduct of private persons, which is not attributable

⁹⁰ Pierre d'Argent, "State Organs Placed at the Disposal of the UN, Effective Control, Wrongful Abstention and Dual Attribution of Conduct," *Question of International Law* 1 (2014): 27-28.

⁹¹ DARIO Commentary, 57.

⁹² DARIO Commentary.

⁹³ Paolo Alchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," 283-286.

⁹⁴ Cedric Ryngaert, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of Military Operations," *Utrecht Journal of International Law* 36, no. 2 (2021): 172.

⁹⁵ Paolo Palchetti, "Attributing the Conduct of Dutchbat in Srebrenica: the 2014 Judgment of the District Court in the Mothers of Srebrenica Case," *Netherlands International Law Review* 62 (2015): 283, <https://doi.org/10.1007/s40802-015-0027-9>.

to the State.⁹⁶ It is further contended that the question of attribution between non-state actors and the State shall be distinguished from peacekeeping operations, where national contingents have been transferred to be under the UN's control.⁹⁷

Indeed, ILC has no intention to apply Article 8 ARSIWA in the context of peacekeeping operations. Initially, the drafters intended Article 8 ARSIWA to be applied in attributing the conduct of the private person or non-State group to the State.⁹⁸ Therefore, at first glance, the Supreme Court's decision might seem unfamiliar since it differs from prior precedent in Nuhanovic and the recent application of Article 8 ARSIWA in the International Court of Justice.⁹⁹ However, as observed by Ryngaert, the application of Article 8 ARSIWA to peacekeeping missions is novel yet justifiable.¹⁰⁰

First, Ryngaert argued that Article 8 ARSIWA does not exclude the possibility of attributing the conduct of peacekeeping forces to the TCS. Rather, it only requires 'person or group of persons,' which implies that attribution of conduct from IO may be covered within the term.¹⁰¹ In its commentary, ILC refers to the 'person or group of persons' as 'private persons or groups.' Nonetheless, the ILC emphasizes that the notion may refer to those who are outside State's official structure.¹⁰² Furthermore, in Jaloud, the EctHR and Dutch District Court found the death of Mr. Jaloud was attributable to the Netherlands, even though the conduct involved the Iraqi Civil Defense Corps (ICDC), a security and service agency of Iraq. In approaching the question of attribution, they relied on Article 8 ARSIWA and found that the Dutch Military had authority and control over the ICDC. Thus, rendering the conduct attributable to the Netherlands.¹⁰³ Here, it is evident that the application of Article 8 ARSIWA can be extended to the organ of another State, which may, analogically, be applied to the organ of an IO as well.¹⁰⁴ As mentioned earlier, military contingents at the UN's disposal are widely perceived as part of the UN's subsidiary organ.

⁹⁶ Nataša Nedeski and Berenice Boutin, "The Continuing Saga of State Responsibility for the Conduct of Peacekeeping Forces: Recent Practice of Dutch and Belgian Courts," *Amsterdam Center for International Law* no. 2020-12 (2020): 15.

⁹⁷ Nataša Nedeski, 16.

⁹⁸ ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, UN Doc A/56/10, 47.

⁹⁹ Appeal Court of the Netherlands, *The Netherlands v. Nuhanovic* (Judgment of 6 September 2013), para. 5.9; Supreme Court of the Netherlands, *The Netherlands v. Nuhanovic* (Judgment of 6 September 2013), para. 3.11.3; See also, ICJ, *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Judgment, 1986, para. 115; ICJ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), 2007, paras. 399–400.

¹⁰⁰ Cedric Ryngaert, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations," *Utrecht Journal of International and European Law* 36, no. 2 (2021): 171, <https://doi.org/10.5334/ujiel.546>.

¹⁰¹ Cedric Ryngaert, 171.

¹⁰² International Law Commission, Draft Articles on Responsibility for Internationally Wrongful Acts, with Commentaries A/56/10, 2001, 47.

¹⁰³ Cedric Ryngaert, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations," 175-177.

¹⁰⁴ Cedric Ryngaert, 177.

Therefore, the Supreme Court's application of Article 8 ARSIWA to peacekeeping operations is viable under international law.¹⁰⁵

Second, Ryngaert acknowledges that the standard of control under Article 8 of ARSIWA and Article 7 DARIO differs. The latter concerns the attribution between States and non-State entities, and the former concerns which entity shall be held responsible.¹⁰⁶ Nonetheless, it is argued that the application of Article 7 DARIO and Article 8 ARSIWA is not overlapping. Rather, it provides a reasonable basis for determining attribution in peacekeeping missions.¹⁰⁷ First, Article 7 DARIO establishes the initial presumption that every act of peacekeeper is attributable to the UN. Second, the presumption can be rebutted if the TCS possesses effective control over the peacekeepers as per Article 8 ARSIWA.¹⁰⁸ By this means of interpretation, the presumptive approach could accommodate the fact that peacekeeping operations are considered a subsidiary organ of the UN and do not rule out the possibility that TCN may intervene UN's operational control over the troops.¹⁰⁹

D. Conclusion

The exploration to find the exact rule of attribution has resulted numerous practices and contesting ideas. Nevertheless, it has reached the conclusion that the attribution of peacekeeping operations shall be determined by those who possess effective control. In further discussion, the notion of effective control has become a subject of debate. In *Mothers of Srebrenica*, the Supreme Court affirmed the interpretation of the notion. This study took a similar view to the decision of the Dutch Supreme Court that the meaning of 'effective control' for both UN and TCS shall be understood under the presumptive approach, as it possesses a sufficient root in international law, both in the practice of peacekeepers and its compatibility to the framework of international law of responsibility.

Furthermore, this study acknowledges that presuming the conduct of peacekeepers to be attributable to the UN may limit victims' ability to seek judicial redress, as the UN's immunity may hinder their recourse. However, it is important to distinguish the attribution issues and the lack of judicial redress caused by the UN's immunity in this context. Consequently, even though preventive interpretation

¹⁰⁵ Cedric Ryngaert, 173

¹⁰⁶ Cedric Ryngaert, 173.

¹⁰⁷ Cedric Ryngaert and Otto Spijkers, "The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in *Mothers of Srebrenica* (2019)," 540-541.

¹⁰⁸ Yohei Okada, "What's Wrong with *Behrami and Saramati*? Revisiting the Dichotomy between the UN Peacekeeping and UN-Authorized Operations in Terms of Attribution", 357-360; Cedric Ryngaert and Otto Spijkers, "The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in *Mothers of Srebrenica* (2019)," 540-541.

¹⁰⁹ Cedric Ryngaert, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations," 174; Cedric Ryngaert and Otto Spijkers, "The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in *Mothers of Srebrenica* (2019)," 540-541.

is way more favorable to provide judicial redress for the victims as it expands attribution to the TCS, it is still not justifiable to adopt an interpretation whose idea does not align with the practice of the UN's peacekeepers and the framework of international law on responsibility.

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