Third Party Claims

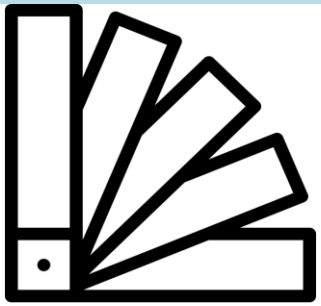
Leuven Manual on the International Law in Peace Operations

Catherine Baele
Legal Advisor
Claims Office
BE MOD

The victim's best option would be that the vehicle belongs to …

?

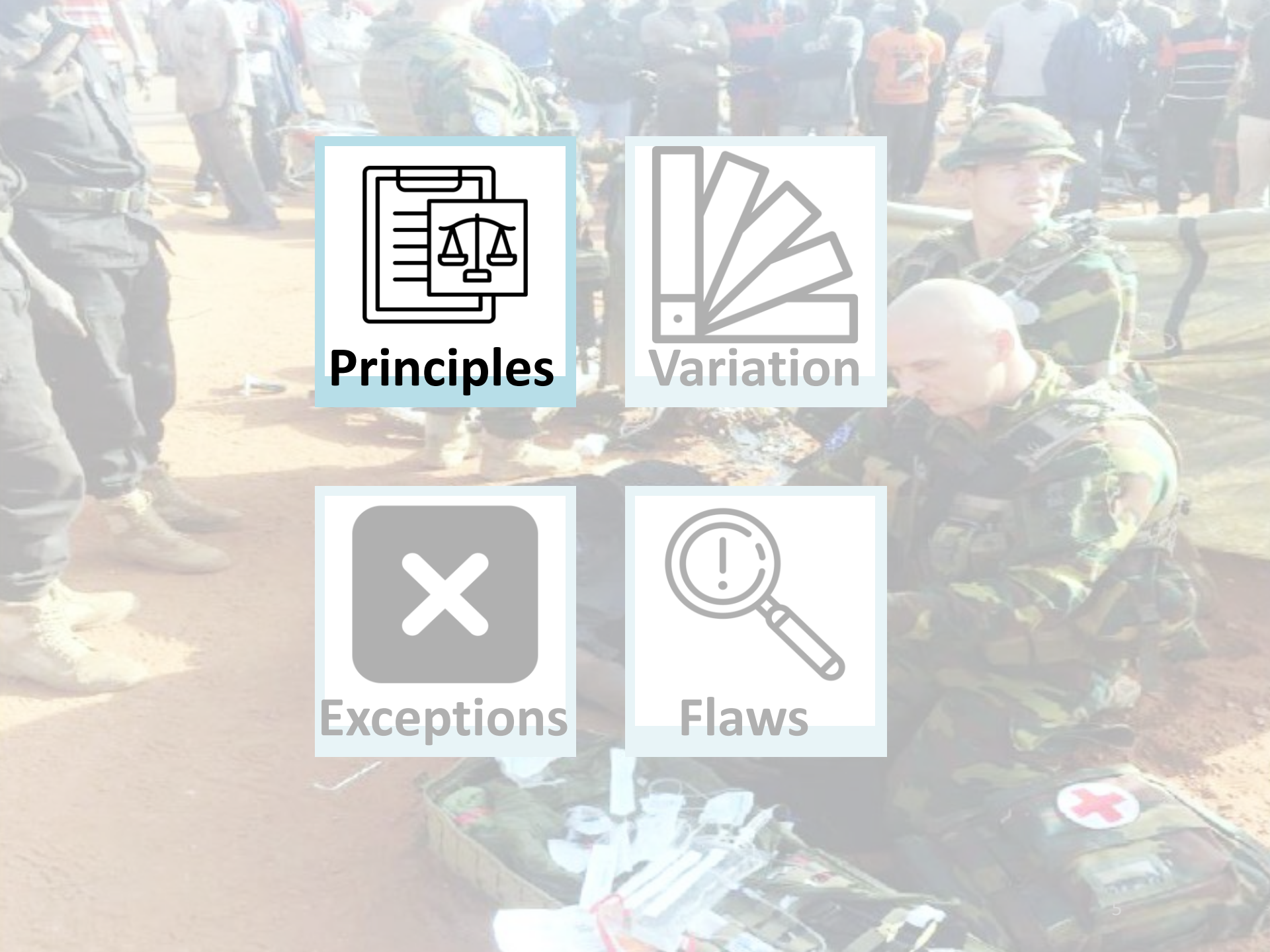
Principles



Variation

Exceptions

Flaws


Principles
Variation
Exceptions
Flaws

- A legal entity is responsible for the proximate injuries its acts may cause.
- Compensation to redress the situation
- Applies to private entities and States, and IO’s.

“

*in the case of **non-contractual** liability, the Union shall, in accordance with the general principle common to the laws of the member States, **make good any damage** caused by its institutions or by its servants in the performance of their duties.*

(art. 340(2) TFEU)

- 3 forms:

Strict liability or non-fault liability

Fault liability or tort for negligence

No liability due to exoneration

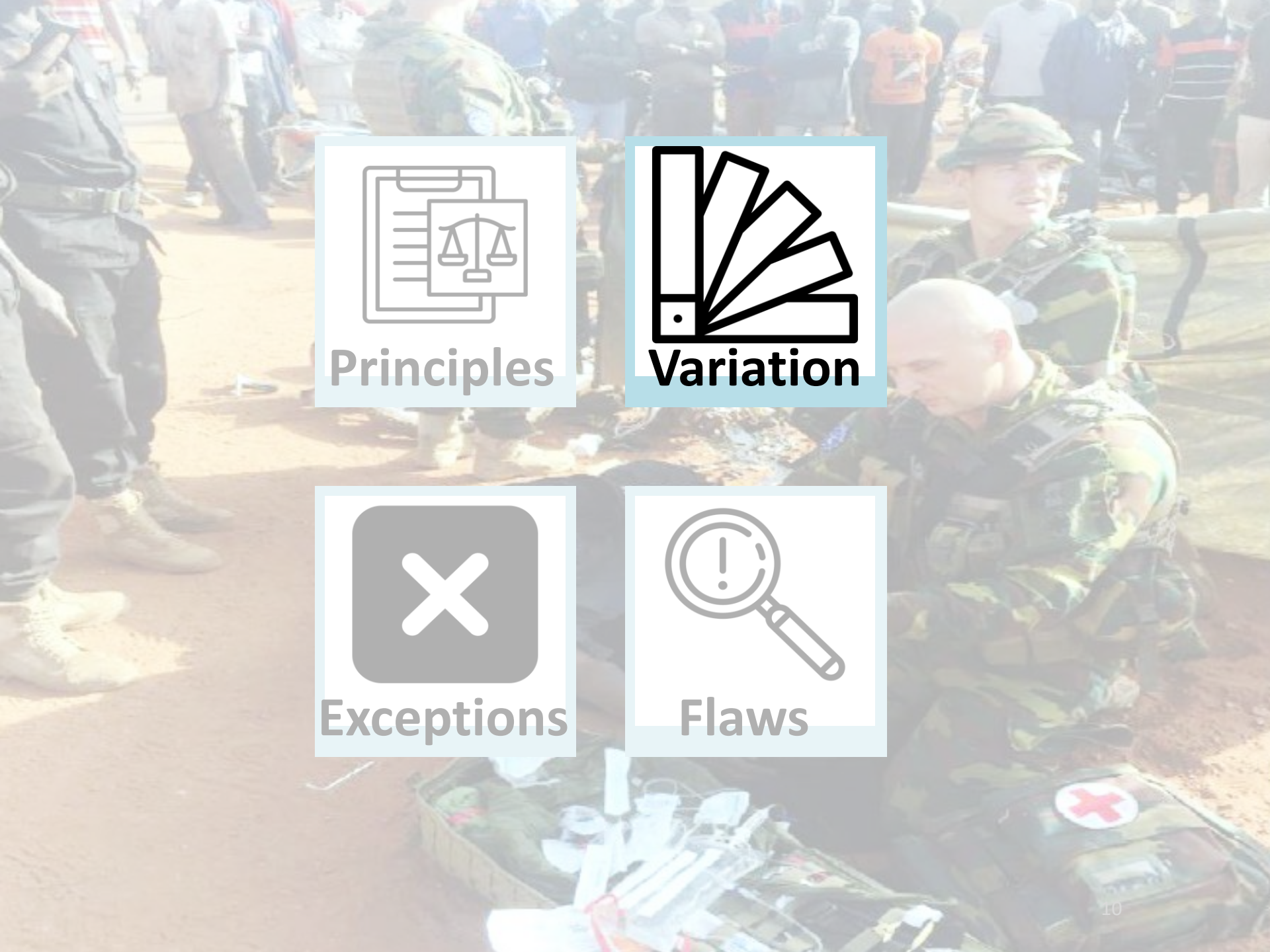
- Attribution issue: agency principle

- Applied to military operations:

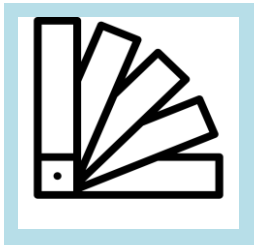
Host state law is applicable

Host state grants peacekeepers jurisdictional immunities

Specific claims procedures in SOFA for each IO

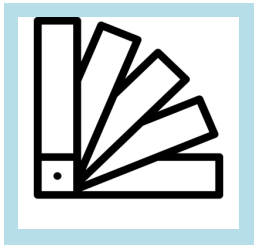

Principles
Variation
Exceptions
Flaws

UN claims system



- The UN covers the civil liability of the TCN except in case of gross negligence or wilful misconduct.
- Established in a MOU with TCN.
- Temporal and financial limitations on claims in the SOFA.
- No claims commissions but local review boards apply local law with fixed maxima.

UN claims system



- Exception for damages due to *operational necessity*:

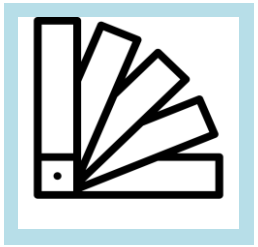
> *“damages caused during ordinary operations by necessary actions taken by a peacekeeping force in the course of carrying out its operations in pursuance of its mandates.*

- Vehicules and aircraft are privately insured.

- Contractual claims include an arbitration clause.


Kolera From UN

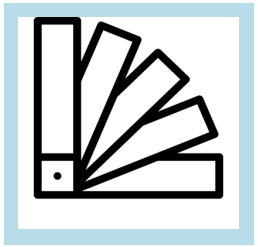
Haiti Cholera Case



- Facts: Cholera Outbreak in 2010 shortly after MINUSTAH was expanded.
- Likely source were Nepalese troops: waste from latrines flowed into a nearby river.
- Poor sanitation system and high temperatures led the outbreak to become epidemic.
- More than 9000 deaths and 800.000 infected.


Kolera From UN
MINUSTHA
Route Nationale #3
Route Nationale #3
3
3

Legal actions by the victims

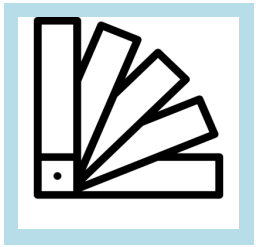


- 2011: MINUSTAH Claims Unit: transfer to OLA
- 2013: UN Office of legal affairs: no private law claims cause review of political or policy matters, citing Section 29 of the CPIUN:

" *The UN shall make **provisions for appropriate modes of settlement** of:*

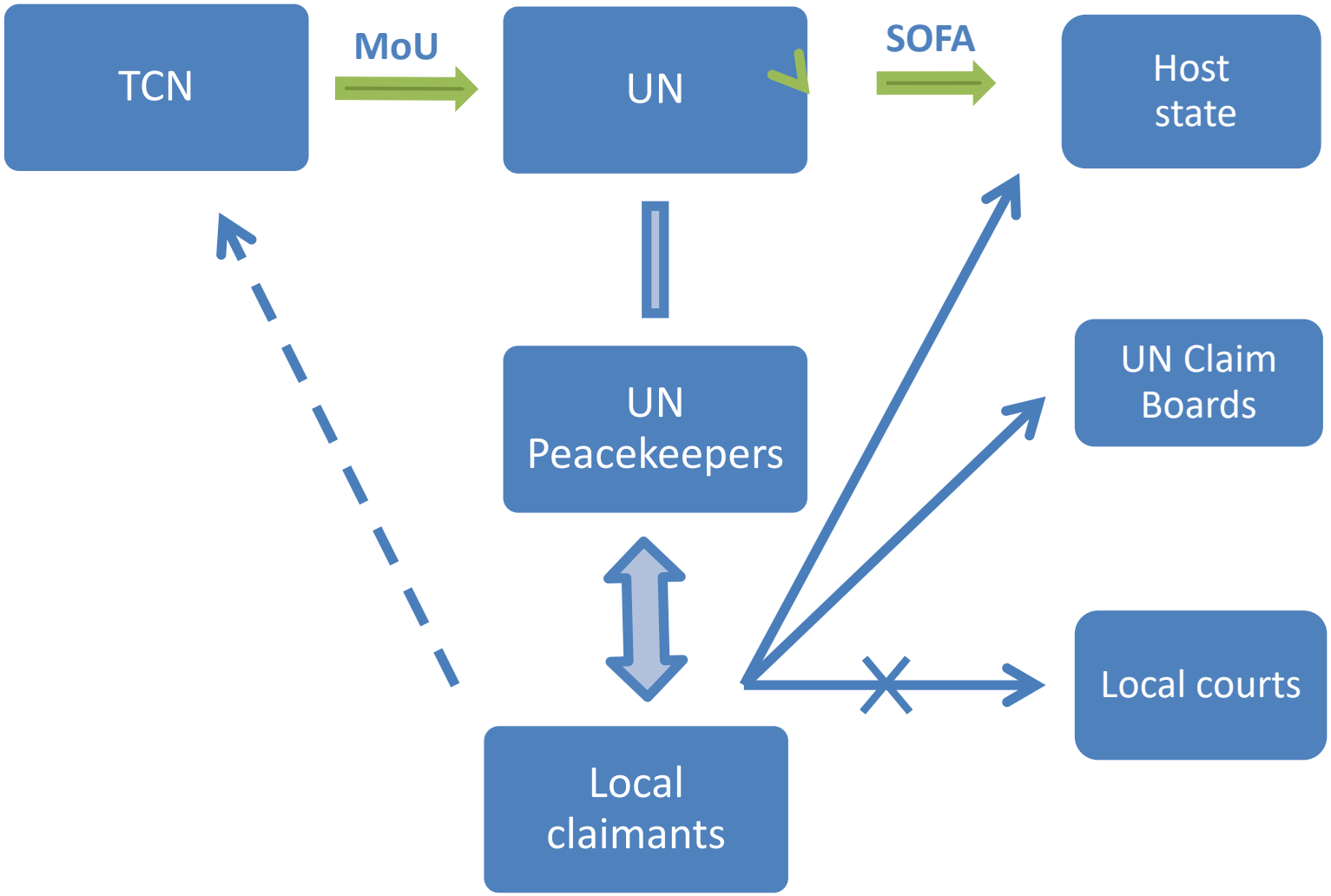
*a) Disputes arising out of contracts or other disputes **of a private law character** to which the UN is a party,*

b) Disputes involving any official of the UN who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

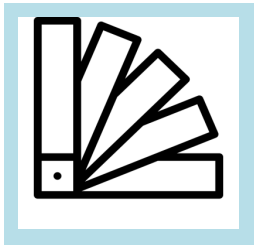


- US Court 2014-2016 : dismissal of the class action: UN is immune from lawsuits based on UN Charter and Immunity Convention.

- UN Trust Fund 2016: new approach based on donations to improve health and sanitation system to eliminate cholera from Haiti + official apology for the UN's role but no acceptance of responsibility.


TCN
MoU
UN
SOFA
Host state
UN Peacekeepers
UN Claim Boards
Local courts
Local claimants

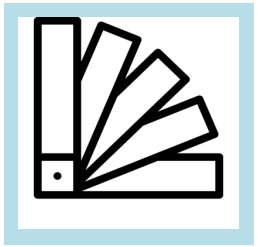
Claims in NATO Ops



- Principle: *costs lie where they fall*.
- NATO only covers damages caused by the HQ.
- TCN handles claims according to its own procedures.
- SOFA with Host State

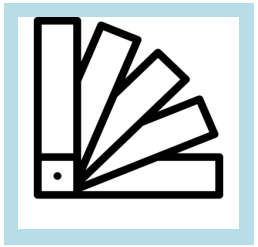
SOFA for the Resolute Support Mission

"*NATO Forces Authorities shall pay just and reasonable compensation in settlement of meritorious third party claims arising out of acts or omissions of Members of the Force and Members of the Civilian Component, and NATO Personnel done in the performance of their official duties and incident to the non-combat activities of NATO Forces. Such claims shall be expeditiously processed and settled by NATO Forces Authorities in accordance with applicable NATO policies and practice and* ***seriously considering the laws, customs and traditions of Afghanistan****. The claims and compensations for damages will be dealt with* ***according to the legal regulations of NATO, NATO Member States*** *or Operational Partners, as appropriate.*



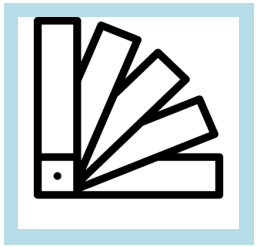
- No co-ordination or control by NATO.
- Damage between NATO TCN’s are waivered.
- Damages due to operational necessities are/were excluded.
- Unique in history NATO: Dayton Claims Commissions in the Balkans.

Touax case



- In April 1999 NATO Allies destroy 3 bridges over the Danube in Novi Sad (Serbia) during Allied Force.
- French company summons FRA, GER and BE before their national courts for economic damages.
- Air strikes were not executed by FRA, GER nor BE.

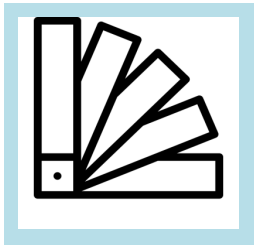
Touax in Belgium



- Court saw no immunity objection: *"it only reviewed the Belgian actions and its decision* ***did not affect the property, rights or interests of NATO or the other States."***

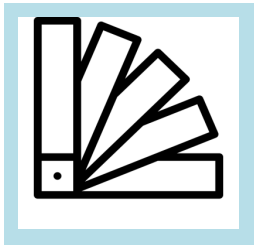
- *On the merits: torts law includes respect for IHL but the bridges were considered legitimate military objects.*

Touax in Germany



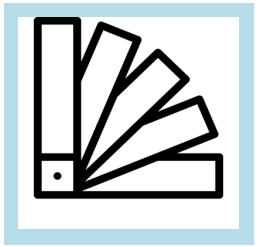
- Individual has no claim for violation of IHL under international law, only their Host state do.
- National tort law disappears behind IHL: actions within the armed forces are not covered by the state liability regime per se.
- Claims require a codified legal basis.

Touax in France



- Contentieux administratif: unequal discharge of public burders.
- No liability for *acte de gouvernment.*
- Military operations are by their nature not subject to engage state liability unless clear, express legislative provisions entitle individuals compensation.

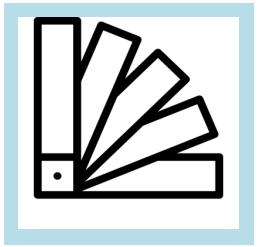
Claims in EU Ops



- Principle: *costs lie where they fall*, like NATO Claims
- However: EU model SOFA provides a role for EUFOR and establishes *Claims Commissions.*
- Damage of EU HQ personnel covered as common cost.
- Exception of *operational necessity.*
- Damage between EU TCN's and EU HQ is waivered. (EU Claims Agreement)

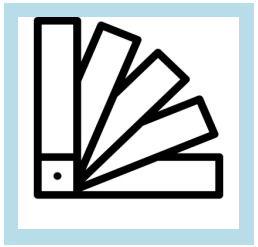

273

UAV Crashes EUFOR Congo



- In July 2006 a BE UAV is shut down, injuring 7 persons and destroying several houses.
- In October 2006 a second UAV crashes due to a fault of the operator, killing 2 persons and injuring 3 others.
- EUFOR legad proposes ex gratia payments based on “operational necessity” exemption.

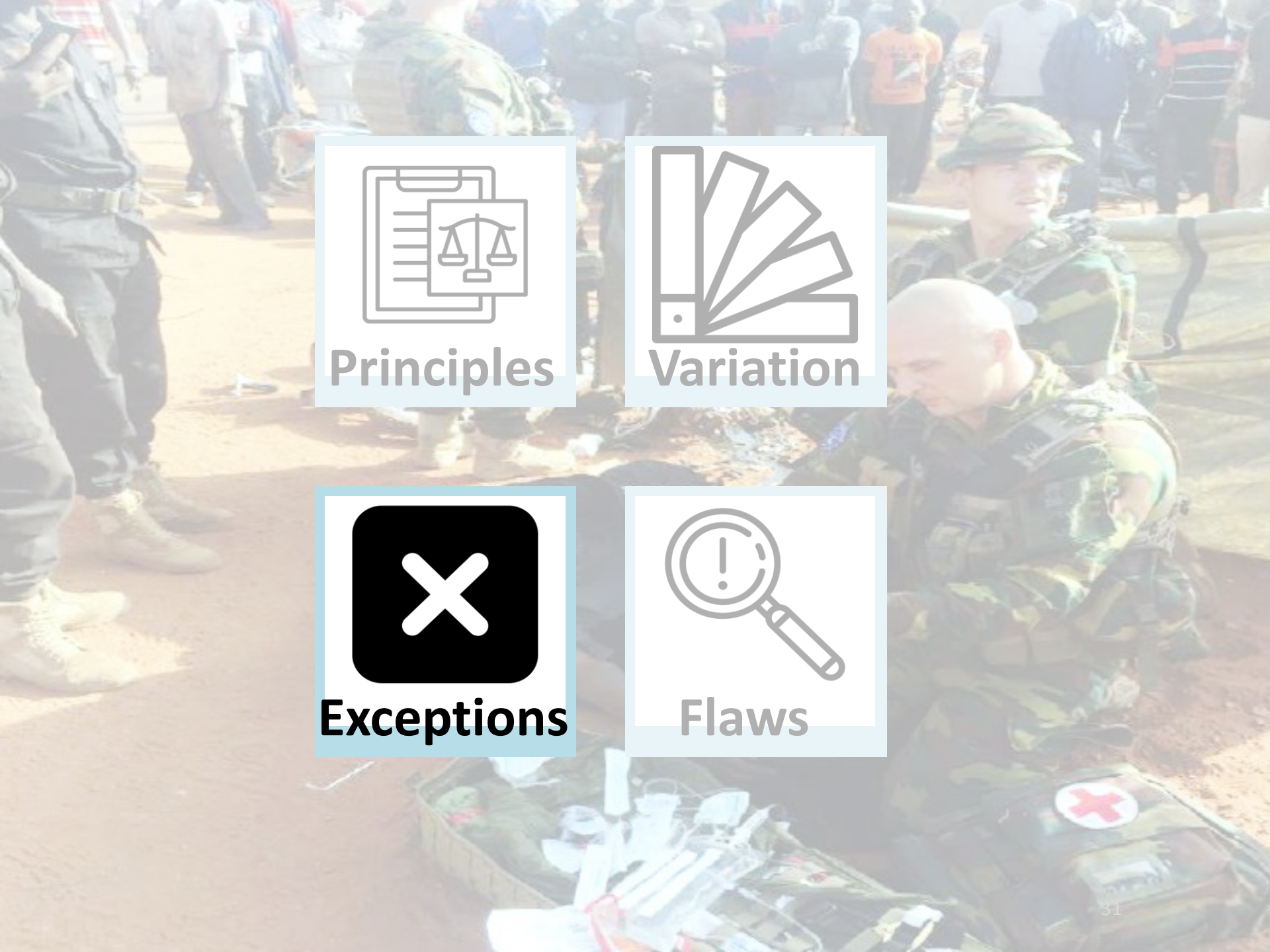
Athena mechanism



"

In the case of non-contractual liability, any damage caused **by the operation headquarters, force headquarters and component headquarters** of the crisis structure, the composition of which shall be approved by the operation commander, or by their staff in the course of their duties shall be covered **through Athena by the contributing States** or third parties, in accordance with the general principles common to the laws of the Member States and the staff regulations of the forces, applicable in the theatre of operations.

(Art. 40.4.)

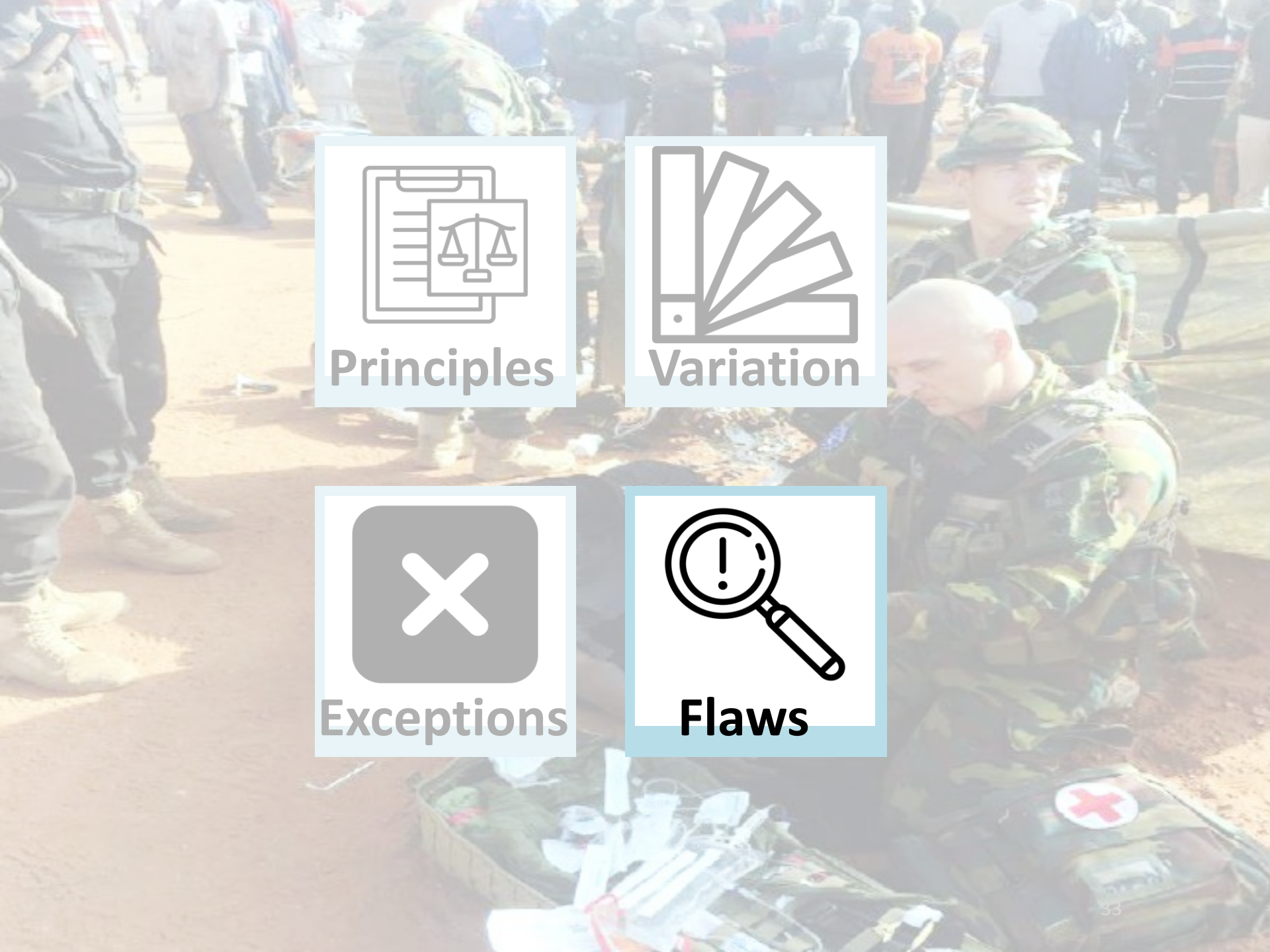

Principles
Variation
Exceptions
Flaws

Exceptions to liability

- Operational necessity: *damages caused during ordinary operations by necessary actions taken by a peacekeeping force in the course of carrying out its operations in pursuance of its mandates.*

- Actions in self-defence

- Combat related damage


Principles
Variation
Exceptions
Flaws

Weaknesses

- No uniform claims system
- Unclear what is considered as private law claims/operational necessity claims/off duty claims
- Financial and temporal restrictions shift financial burden on Host State.

Weaknesses

- TCN’s and IO are their own judges, no claims commissions, non motivated decisions, no appeal body.

- Little coordination and no transparency

Attribution problem

- Approach to attribution differs depending on the IO.
- Attribution is unclear in case of multiple actors who exercise operational control, organic control and strategic control over members of a force.

Trends

- Alternative dispute resolution test as counterpart for immunities in Host State.
- Refining of the attribution rule of effective control.
- Entry of a duty of care liability during military operations towards individuals by TCN's and IO's.

The victim's best option would be that the vehicle belongs to …

EUFOR → Allianz

EUFOR → BE claims office

UN → AIG

Questions?

Catherine Baele
Legal Advisor
Claims Office
BE MOD
catherine.baele@mil.be