

2009

The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions

Muna Ndulo

Recommended Citation

Muna Ndulo, *The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions*, 27 BERKELEY J. INT'L LAW. 127 (2009).

Available at: <http://scholarship.law.berkeley.edu/bjil/vol27/iss1/5>

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of International Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

The United Nations Responses To The Sexual Abuse And Exploitation Of Women And Girls By Peacekeepers During Peacekeeping Missions

Muna Ndulo*

International law concerning sexual violence has developed dramatically during the past 50 years. Within the field of international criminal law, there has been a transformation from the Nuremberg Tribunal's failure to acknowledge crimes of a sexual nature to the specific definitions of sexual crimes in the text of the Rome Statute of the International Criminal Court (ICC)¹ and in the jurisprudence of both the International Criminal Tribunal for the former Yugoslavia (ICTY)² and the International Criminal Tribunal for Rwanda (ICTR).³ Carla Del Ponte, prosecutor of the Yugoslav tribunal, observed that "when the [Yugoslav] tribunal closes its doors, part of its legacy will be the condemnation of sexual violence against women during times of conflict".⁴ Set against the historical silence surrounding war-time sexual violence, the progress achieved over

* LL.B. (University of Zambia), LL.M. (Harvard Law School), D. Phil. (Trinity College, Oxford University), Professor of Law, Cornell University Law School, and Director, Cornell University's Institute for African Development.

1. Rome Statute of the International Criminal Court, art. 7(1)(g), July 17, 1998, 2187 U.N.T.S. 3. Article 7 provides the following elements for crime against humanity of sexual violence: (1) the perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent; (2) such conduct was of a gravity comparable to other offenses in art. 7(1)(g); (3) the perpetrator was aware of the factual circumstances that established the gravity of the conduct; (4) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (5) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. *Id.* at art. 7.

2. Prosecutor v. Tadic, Case No. IT-94-1-T, Sentencing Judgment (July 14, 1997).

3. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, (Sept. 2, 1998).

4. Press Release, U.N., Violence Against Women Deserves Deadly Serious Consideration, Secretary-General Says at Special Event to Observe International Women's Day, U.N. Doc. OBV/609-WOM/1619 (Mar. 8, 2007).

the past decade has been significant: men who had raped and sexually enslaved women have been convicted and imprisoned, and the role of political and military authorities in tolerating and encouraging sexual violence against women has been acknowledged and condemned in the tribunals' indictments and judgments.⁵ As the law has developed, new contexts for the commission of sexual violence have emerged. One of those contexts is peacekeeping operations.

International relations after the Second World War and the establishment of the United Nations in 1945 quickly brought out differences that existed among the United Nations member states. New conflicts arose, particularly during the process of decolonization, and often complicated by the Cold War. Many of these conflicts could not be resolved by peaceful means. Peacekeeping evolved out of the need to stop these conflicts from developing into broader conflicts and to stop hostilities.⁶ Peacekeeping missions are essentially holding operations designed to create space for mediators and others to work out a political solution and address the underlying causes of the conflicts. Typically, peacekeepers monitor and observe cease-fires, assist ex-combatants in implementing the peace agreements they have signed, demobilize combatants, and secure refugee camps.⁷ A peacekeeping operation can be defined as an operation involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict.⁸ The operations are based on the consent and cooperation of the parties to the conflict. While they involve the use of military personnel, they achieve their objectives not by force of arms, which differs from United Nations enforcement action under Article 42 of the United Nations Charter, which provides for Security Council authorization to use force where measures not involving force have failed.⁹

United Nations peacekeeping operations began in 1948 with the first-ever

5. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, (Sept. 2, 1998); Prosecutor v. Furundzija, Case No. IT-95-17/1-A, Judgment (July 21, 2000).

6. Brian Urquhart, *The United Nations, Collective Security and International Peacekeeping*, in NEGOTIATING WORLD ORDER: THE ARTISANSHIP AND ARCHITECTURE OF GLOBAL DIPLOMACY 59, 62 (Alan K. Henrikson ed., Scholarly Res. 1986).

7. Peter H. Gantz, *The Postconflict Security Gap and the United Nations Peace Operations System*, in SECURITY, RECONSTRUCTION, AND RECONCILIATION: WHEN THE WARS END 247 (Muna Ndulo ed., UCL 2007).

8. The United Nations has noted that the term defies simple definition. Though the term is not found in the U.N. Charter, Dag Hammarskjöld, the second U.N. Secretary-General, referred to peacekeeping as belonging to "Chapter Six and Half," which puts it between traditional methods of peaceful dispute resolution such as negotiation and mediation under Chapter VI, and more forceful action as authorized by Chapter VII. U.N. Dep't of Pub. Information, *U.N. Peacekeeping: In the Service of Peace*, <http://www.un.org/Depts/dpko/dpko/intro/1.htm>. See also U.N., Dep't of Peacekeeping Operations, *General Guidelines for Peacekeeping Operations*, U.N. Doc. UN/210/TC/GG95 (Oct. 1995).

9. U.N. Charter art. 42. A former Legal Counsel of the United Nations has defined peacekeeping operations as actions involving the use of military personnel in international conflicts situations on the basis of the consent of all parties concerned and without resorting to armed force except in cases of self-defense. E. Suy, *Peace-Keeping Operations*, in A HANDBOOK ON INTERNATIONAL ORGANIZATIONS (R.J. Dupuy ed., 1988).

mission, the United Nations Truce Supervision Organization (UNTSO), an operation aimed at monitoring a ceasefire that had been agreed upon in the Arab-Israeli conflict.¹⁰ In terms of the size and scope of activities, the end of the Cold War precipitated a dramatic shift in United Nations and multilateral peacekeeping. The Cold War rivalries that prevented the deployment of peacekeepers have dissipated. In a new spirit of cooperation, the United Nations established larger and more complex United Nations peacekeeping missions, often to help countries torn by conflict create conditions for sustainable peace and development. Furthermore, peacekeeping has come to involve a diverse array of activities including: confidence-building measures, cease-fire monitoring, disarmament of combatants, election monitoring, and humanitarian relief distribution.¹¹ Today there are 16 peacekeeping missions around the world with 113 countries contributing 99,817 military troops, observers, police, and civilians.¹² A new mission for Darfur, which is likely to be the largest peacekeeping mission in the history of the United Nations, is in an advanced stage of establishment and deployment.¹³ With the dramatic increase in United Nations peacekeeping operations, a major problem has inadvertently emerged – the sexual exploitation and abuse committed by peacekeepers on local populations in the context of peacekeeping operations. Peacekeepers have been accused of engaging in sex-trafficking, soliciting prostitutes, forcing children into prostitution, and having sex with minors.¹⁴

Peacekeepers have also been accused of fathering and leaving behind their babies.¹⁵ The United Nations does not track the population of children abandoned by peacekeepers, but one recent investigation into sexual exploitation in the Congolese town of Bunia cited a growing number of babies allegedly fathered by United Nations soldiers and civilians.¹⁶ A confidential United Nations report, obtained by *The Washington Post*, recounts the story of an unidentified American employee of the United Nations who allegedly fathered children in

10. Stephen Lendman, *UN Peacekeeping Paramilitarism*, INDYBAY, Feb. 15, 2007, <http://www.indybay.org/newsitems/2007/02/15/18363669.php>.

11. See Boutros Boutros Ghali, *AN AGENDA FOR PEACE* (U.N. 1992). In his book, Boutros Ghali, the former Secretary-General of the United Nations, analyzes various forms of peacekeeping.

12. Lendman, *supra* note 10.

13. S.C. Res. 1769 U.N. Doc. S/RES/1769 (July 31, 2007). Resolution 1769 provides for a 26,000-strong hybrid African Union-United Nations Mission. Nearly half of the forces have been deployed. The force is severely under-resourced. Press Release, U.N., African Union-United Nations Hybrid Force in Darfur Severely Under-Resourced to Protect Civilians, Peacekeeping Chief Wars Security Council, U.N. Doc. SC/9243 (Feb. 8, 2008).

14. After the deployment of peacekeepers in Kosovo, the Organization of Security and Cooperation in Europe (OSCE) identified trafficking in women as a problem and peacekeepers as major participants in the trade. See Jehan Kaleeli, *Conflict, Sexual Trafficking, and Peacekeeping*, Oct. 8, 2004, <http://www.refugeesinternational.org/content/article/detail/4146>.

15. Office of Internal Oversight Servs., *Report of the Office of Internal Oversight Services on its Investigations into Allegations of Sexual Exploitation and Abuse in the Ituri Region (Bunia) in the United Nations Organization Mission in the Democratic Republic of the Congo*, ¶ 25, U.N. Doc. A/61/841 (Apr. 5, 2007) [hereinafter *Bunia Report*].

16. Colum Lynch, *Report on Abuse Argues DNA Tests for Peacekeepers*, WASH. POST, Mar. 25, 2005, at A15.

Haiti, East Timor, and Congo.¹⁷ Such children are often the subject of ostracism and are left without any form of support.¹⁸ They are ostracized because, often being of mixed race, they stand out and look different from the general population into which they are born. They are also usually born into societies that are conservative and typically look down on children born out of wedlock.

The problem of sexual abuse and sexual exploitation by peacekeepers is not confined only to peacekeepers from certain states. It has occurred among the military and civilian personnel of a wide range of countries from all parts of the world. The allegations have been extremely damaging to both peacekeeping operations and the United Nations, mainly by undermining the peacekeeping mandates and by generating a negative image of the United Nations in the media. As the former United Nations Secretary-General, Kofi Annan observed, “[s]exual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for. Men, women, and children displaced by conflict or other disasters are among the most vulnerable people on earth. They look to the United Nations and its humanitarian partners for shelter and protection.”¹⁹ The post-conflict environments in which the United Nations peacekeeping missions operate are typically characterized by collapsed economies, weak judicial systems, corrupt and ineffective law enforcement agencies, weak or non-existent rule of law, and significant power differentials between peacekeepers and the local populations. These factors significantly increase the vulnerability of local populations to sexual abuse and exploitation by peacekeepers. In an effort to stem the scourge, the United Nations has adopted a number of measures. Efforts, however, continue to focus on how to best deal with the problem, ensure that perpetrators of these crimes are punished, and that there is no impunity from prosecution for such crimes.

This article examines the problem of sexual abuse and exploitation in peacekeeping operations and the United Nations’ responses to the problem. The article is divided into four parts:

- Part I looks at the developments in the law regarding the prohibition and punishment of sexual abuse and exploitation committed in the context of conflicts;
- Part II examines the nature and extent of the sexual abuse problem in peacekeeping missions; and
- Part III focuses on the United Nations’ responses to the problem and suggests solutions for prosecuting perpetrators. It also proposes

17. *Id.*

18. Patricia Lee Sharpe, *Thoughts on U.N. Peacekeeper Babies*, WHIRLEDVIEW, Mar. 29, 2005, http://whirledview.typepad.com/whirledview/2005/03/thoughts_on_un_.html.

19. The Secretary-General, *Investigation into sexual exploitation of refugees by aid workers in West Africa*, ¶ 3, U.N. Doc. A/57/465 (Oct. 11, 2002). The Secretary-General reiterated this position in a sub-section of the report entitled “Preventing and responding to sexual exploitation and abuse by humanitarian and peacekeeping personnel” in the Secretary-General’s Report on Women and peace and security. The Secretary-General, *Women and peace and security*, U.N. Doc. S/2004/814 (Oct. 13, 2004).

mechanisms for assisting victims and ensuring the maintenance of peacekeepers' babies by their fathers.

- Finally, Part IV draws conclusions.

I.

DEVELOPMENTS IN THE LAW ON THE PROHIBITION OF SEXUAL ABUSE AND EXPLOITATION IN THE CONTEXT OF CONFLICTS

While the post-World War II trials held in Nuremberg and Tokyo largely neglected sexual violence, the former Yugoslav and Rwandan Tribunals have successfully prosecuted various types of sexual violence as forms of genocide, crimes against humanity, torture, enslavement, and war crimes.²⁰ Historically, most nations treated these most serious crimes as the unfortunate but unavoidable consequences of war.²¹ This was fueled by a culture that regarded violation of women as spoils of war and a "boys will be boys" problem.²² In 1993, the Vienna Conference on Human Rights helped to change this traditional view and contributed to the great deal of attention that sexual crimes have received in recent times. It witnessed the extraordinary success of efforts by women's rights activists worldwide to end the historic disregard of human rights violations of women.²³ The Vienna Declaration and Program of Action on Human Rights placed unprecedented emphasis on eliminating violence against women as a human right.²⁴ The Declaration identified violence against women generally and specified certain kinds of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, as practices incompatible with human dignity.²⁵

Professor Donna Sullivan has argued that the publicity given by both print and electronic media to widespread sexual crimes and violence against women during the conflict in the former Yugoslavia coupled with the campaigns by non-governmental organizations against the same galvanized governments motivated the international community to take measures against sexual crimes and violence against women.²⁶ The NGO-led movement to promote women's hu-

20. Prosecutor v. Delalic, Case No. IT-96-21-A, Judgment (Feb. 20, 2001); Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, (Sept. 2, 1998); Louise Arbour, *Sex Crimes Against Women in Conflict Seldom Punished*, ALLAFRICA, Mar. 8, 2007.

21. See Tamara L. Tompkins, *Prosecuting Rape as War Crime: Speaking the Unspeakable*, 70 NOTRE DAME L. REV. 845 (1995).

22. See *id.*; see also *Bunia Report*, *supra* note 15, at ¶ 26.

23. See Donna J. Sullivan, *Women's Human Rights and the 1993 World Conference on Human Rights*, 88 AM. J. INT'L L. 152 (1994). Susan Brownmiller in her book *AGAINST OUR WILL: MEN, WOMEN AND RAPE*, presented stark accounts of rape and other sexual atrocities that have been committed during armed conflict throughout history. Susan Brownmiller, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* (1975).

24. Sullivan, *supra* note 23, at 152-67.

25. World Conference on Human Rights, Jun 14-25, 1993, *Vienna Declaration and Programme of Action* ¶ 18, U.N. Doc. A/CONF.157/23 (July 12, 1993).

26. *Id.* at 155. Women2000 observed: "Towards the end of 1992, the world was stunned by reports of sexual atrocities committed during the armed conflict in the former Yugoslavia. Newspa-

man rights that developed out of the Vienna Declaration and the Program of Action on Human Rights aided by increased media attention and further aided by developments in modern communications which has made NGO advocacy easier and less expensive, has resulted in the elaboration of a comprehensive legal framework that deals with violence against women.²⁷ At the international level, this framework has aimed to provide protection to women and girls during armed conflict and its aftermath, and to ensure that there is no impunity for persons who commit these crimes. Additionally, the international criminalization of activities in domestic armed conflicts has been of great significance, as have gender sensitive prosecutorial policies. Another major advance resulting from these initiatives has been the determination of those responsible for many of the sexually violent offenses against women and girls during armed conflicts as war criminals.²⁸ This has undermined the culture of impunity that pervaded in this context.²⁹ It is essential that these positive developments are not only maintained but also further advanced. Although there is now a greater understanding of violence against women during conflicts, significant attention needs to be paid to improving compliance with existing norms and developing new standards where the present ones prove inadequate to deal with new situations that arise, like the sexual exploitation of females by United Nations peacekeepers and the phenomenon of peacekeepers' babies.

Another ground-breaking advance was the United Nations Security Council's adoption of Resolution 1325 on Women, Peace and Security in 2000.³⁰ Resolution 1325 particularly focused on rape and other forms of sexual abuse, as well as all other forms of violence in situations of armed conflict, calling on members to fully implement international humanitarian and human rights law that protects the rights of women and girls during and after conflicts.³¹ Since then, the Secretary-General has submitted annual reports on the implementation of Resolution 1325.³² These reports are debated in the Security Council and provide an opportunity to assess and reflect on the progress that is being made in

per headlines decried: 'Serbian 'rape camps': Evil Upon Evil' and 'Serbs rape on highest orders.'" Women's Rights Unit, U.N. Division for the Advancement of Women, *Sexual Violence and Armed Conflict: United Nations Response*, WOMEN2000 (April 1998), <http://www.un.org/womenwatch/daw/public/w2apr98.htm>.

27. U.N., WOMEN, PEACE AND SECURITY: STUDY SUBMITTED BY THE SECRETARY-GENERAL PURSUANT TO SECURITY COUNCIL RESOLUTION 1325, U.N. Sales No. E.03.IV.1 (U.N. 2002). Chapter III outlines the legal framework thus far achieved.

28. See, e.g., Prosecutor v. Delalic, Case No. IT-96-21, Judgment (Nov. 16, 1998); Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998).

29. See Prosecutor v. Delalic, Case No. IT-96-21, Judgment (Nov. 16, 1998); Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998).

30. S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

31. *Id.*

32. For the 2002, 2004, 2005, 2006, and 2007 reports, see The Secretary-General, *Women, peace and security*, U.N. Doc. S/2002/1154 (Oct. 16, 2002); The Secretary-General, *Women and peace and security*, U.N. Doc. S/2004/814 (Oct. 13, 2004); The Secretary-General, *Women and peace and security*, U.N. Doc. S/2005/636 (Oct. 10, 2005); The Secretary-General, *Women, peace and security*, U.N. Doc. S/2006/770 (Sept. 27, 2006); The Secretary-General, *Women and peace and security*, U.N. Doc. S/2007/567 (Sept. 12, 2007).

combating sexual crimes and sexual exploitation during conflicts and in post-conflict areas and have provided opportunities to deal with sexual violence against women. They also recommend further action by the international community. While much remains to be done, especially in terms of holding states accountable for the actions of fighting forces, significant progress has been made in criminalizing and exposing violence against women, sexual abuse and exploitation and galvanizing states in the fight against these evils. Progress has also been made in introducing codes of conduct that establish zero-tolerance to sexual violence crimes for all United Nations personnel, including peacekeepers, who sexually exploit or abuse those they are meant to protect.³³

On June 19, 2008, the United Nations Security Council took another historic step on the question of violence against women when it passed Resolution 1820 on Sexual Violence in Armed Conflict.³⁴ Resolution 1820 recognized the importance of Resolution 1325 and reaffirmed the Security Council's commitment to ending sexual violence as a weapon of war and as a means to terrorize populations and destroy communities.³⁵ In Resolution 1820, the Security Council described sexual violence as a tactic of war used to humiliate, dominate, instill fear in, and/or forcibly relocate civilian members of a community or ethnic group.³⁶ Further, the Council noted that violence can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security.³⁷ This is an important determination as it can be used to advance the argument that the Security Council, as a body under the United Nations Charter and charged with the primary responsibility of maintaining peace and security, needs to remain engaged in this matter.³⁸

At the level of prosecuting perpetrators of sexual violence offenses in the context of war, although international tribunals can only prosecute a fraction of cases, great strides were made with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in developing the law regarding violence against women in conflicts.³⁹ The ICTY and the ICTR produced a series of decisions that explicitly recognized the international criminal nature of acts of sexual violence. Together, the

33. U.N., Dep't of Peacekeeping Operations, *Ten Rules: Code of Personal Conduct for Blue Helmets* (1996), http://www.genderandpeacekeeping.org/resources/5_UN_Codes_of_Conduct.pdf. See also G.A., *Ensuring the Accountability of United Nations Staff and Experts on Mission with Respect to Criminal Acts Committed in Peacekeeping Operations*, U.N. Doc. A/60/980 (Aug. 16, 2006). This report contains the findings and recommendations of a group of legal experts appointed by the Secretary-General in October 2005 to conduct a study on the best ways to ensure that U.N. staff members and experts on mission who serve in peacekeeping operations and who commit crimes during their peacekeeping assignments can be held criminally accountable.

34. S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008).

35. *Id.*

36. *Id.*

37. *Id.*

38. See U.N. Charter art. 24. Article 24 places the primary responsibility for peace and security in the Security Council.

39. Allison M. Danner, *When Courts Make Law: How the International Criminal Tribunals Recast the Laws of War*, 59 VAND. L. REV. 1, 1-65 (2006).

decisions resulted in the classification of acts of sexual violence as forms of genocide, crimes against humanity, war crimes, and grave breaches of the Geneva Conventions. Several critical cases set important precedent. In *Tadic*, the Tribunal formally recognized sexual violence as an international crime.⁴⁰ The *Delalic* Tribunal recognized sexual humiliation as a war crime and a grave breach of the Geneva Conventions and established command responsibility for acts of sexual violence.⁴¹ The Tribunal found rape and forced watching of rape to constitute torture as well as a war crime in *Furundzija*.⁴² In *Kunarac*, rape, enslavement of women, and related outrages upon personal dignity were found to constitute crimes against humanity as well as war crimes.⁴³ In the ICTR jurisprudence, *Akayesu* was the major case solidifying sexually violent acts as international crimes.⁴⁴ In this case, the Tribunal found that as long as there was a specific intent to destroy a particular group in whole or in part, rape could constitute genocide.⁴⁵

The final text of the Rome Statute of the ICC also made major strides in rectifying many of the injustices and deficiencies of the prosecution of gender-based crimes in international law. This was done primarily by enlarging the scope of the crimes. While the Nuremberg Charter did not explicitly recognize rape as a crime against humanity (which was later corrected by judicial interpretation),⁴⁶ the ICC explicitly codified sexual assaults such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity as crimes against humanity.⁴⁷ In building upon the advances achieved by the former Yugoslav and Rwandan Tribunals, the ICC statute has provided more comprehensive and precise definitions for gender-based crimes, thereby making it easier to prosecute such crimes.

Another area of the law that provides a framework for the prosecution of gender-based crimes is international humanitarian law. War crimes as we know them today were first elaborated and statutorily defined in the Nuremberg Charter.⁴⁸ Four years later, they were incorporated into the "grave breaches" provisions of the 1949 Geneva Conventions.⁴⁹ Outside the Statute of the ICC, the

40. Prosecutor v. *Tadic*, Case No. IT-94-1-T, Sentencing Judgment (July 14, 1997).

41. Prosecutor v. *Delalic*, Case No. IT-96-21, Judgment (Nov. 16, 1998).

42. Prosecutor v. *Furundzija*, Case No. IT-95-17/1, Judgment, ¶ 171 (Dec. 10, 1998).

43. Prosecutor v. *Kunarac*, Case No. IT-96-23-T & 96-23/I, Judgment (July 21, 2000).

44. Prosecutor v. *Akayesu*, Case No. ICTR-96-4-T, Judgment, ¶ 687 (Sept. 2, 1998).

45. *Id.* at ¶ 731.

46. Trial of General Tomoyuki Yamashita [U.S. Military Comm'n, Manila (Oct. 8-Dec. 7, 1945)], IV L. REPORTS OF TRIALS OF WAR CRIMINALS 1. (U.N. War Crimes Comm'n, London: HMSO, 1948).

47. Rome Statute of the International Criminal Court, art. 7(1)(g), July 17, 1998, 2187 U.N.T.S. 3.

48. Charter of the International Military Tribunal (IMT), in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement), August 8, 1945, 59 Stat. 1544; E.A.S. No. 472; 82 U.N.T.S. 279 (1951).

49. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva I), Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at

Geneva Conventions remain the main texts of humanitarian law and provide the main framework for the protection of individuals affected by armed conflict, especially for countries that are not party to the ICC Statute.

International humanitarian law consists of two main strains: treaties regulating the methods and materials of warfare, such as the use of certain weapons (“the law of the Hague”) and those aimed at protecting persons not taking active part in the hostilities (“the law of Geneva”). Although the treaties were primarily meant to regulate armed conflict between state parties to the conventions, they also provide minimal requirements in cases of internal armed conflicts, in the form of Common Article III. This provision, contained in all four conventions, provides that all parties to a non-international armed conflict taking place within the territory of a state party are required to treat all persons not taking active part in hostilities “humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.”⁵⁰ To this end, Common Article III explicitly prohibits:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment; and
- (d) the passing of sentences and executions without a regularly constituted court’s previous judgment, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.⁵¹

These prohibitions, which are closely linked to the foundational norms of the then-emerging law of international human rights, are thus the absolute minimum requirements for protecting non-combatants during all armed conflicts.

Common Article III is supplemented by the Second Protocol Additional to the Geneva Conventions (Protocol II).⁵² Adopted in 1977, Protocol II regulates armed conflicts that take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups.⁵³ Under responsible command, the latter organized armed groups exercise such control over a part of the High Contracting Party’s territory so as to enable them to carry out sustained and concerted military operations and to im-

See (Geneva II), Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War (Geneva III), Aug. 12, 1949, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV), Aug. 12, 1949, 75 U.N.T.S. 287.

50. See, e.g., Geneva IV, *supra* note 49, at art. 3.

51. *Id.*

52. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 1.1. 1125 U.N.T.S. 609 (June 8, 1977).

53. *Id.*

plement the protocol.⁵⁴ Although less widely ratified than the Geneva Conventions, the protocol has nevertheless been recognized as codifying customary international law. At its core, Protocol II expands on the basic prohibitions of Common Article III to criminalize acts of terrorism, rape and forced prostitution, slavery and the slave trade, and pillage.⁵⁵ It also provides special protection for children, requiring that they be granted educational opportunities and that families not be separated unnecessarily, and prohibiting the use of child soldiers under the age of fifteen.⁵⁶ As in international armed conflicts, special steps must be taken to protect civilian populations, including a prohibition on acts or threats of violence designed to “spread terror among the civilian population”⁵⁷ and the targeting of civilian objects including hospitals, agriculture and cultural objects.⁵⁸ Finally, the forced movement of civilian populations is strictly prohibited.⁵⁹

The protections and guarantees laid down by the Geneva Conventions and their additional protocols are granted to all without discrimination. Women, combatants, and civilians enjoy the protection of these general rules of international humanitarian law on the basis of equality with men. The Geneva Conventions and their additional protocols also include special provisions that offer additional protection to women. These require women to be treated with all consideration due to their sex (Geneva I, Article 12; Geneva II, Article 12; Geneva III; Article 14; Protocol I, Article 76), seek to reduce women’s vulnerability to sexual violence, and provide protections for pregnant women and mothers of young children.⁶⁰ Article 75.2 of Protocol I of the Geneva Conventions prohibits, in relation to both women and men, “outrages upon personal dignity”, in particular humiliating and degrading treatment, forced prostitution, and any form of indecent assault, whether committed by military or civilian personnel.⁶¹ Article 76 of the Protocol applies specifically to women, and provides that women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other forms of indecent assault.⁶² Protocol I additionally provides that all children shall be the object of special respect and are to be protected against sexual assault and shall be provided with

54. *Id.* This definition was intended to narrow the scope of conflicts that are regulated by the treaty, and explicitly excludes “internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature, as not being armed conflicts.” *Id.* at art. 1.2.

55. *Id.* at art. 4.2.

56. *Id.* at art. 4.3.

57. *Id.* at art. 13.

58. *Id.* at art. 14-16.

59. *Id.* at art. 17.

60. U.N., WOMEN, PEACE AND SECURITY: STUDY SUBMITTED BY THE SECRETARY-GENERAL PURSUANT TO SECURITY COUNCIL RESOLUTION 1325, ¶¶ 119, 121, U.N. Sales No. E.03.IV.1 (U.N. 2002).

61. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 75.2, 1125 U.N.T.S. 3 (June 8, 1977) (hereinafter Protocol I).

62. *Id.* at art. 76.

care and aid.⁶³

The Geneva Conventions technically do not apply to United Nations peacekeeping forces that perform classical peacekeeping duties. First, the United Nations is not a state. Only states may be parties to the Geneva Conventions.⁶⁴ Furthermore, in peacekeeping operations, United Nations peacekeepers are considered non-combat forces and are typically charged with monitoring peace agreements and cease-fires.⁶⁵ They are not allowed to use force except in self-defense and cannot militarily engage with fighting groups. The United Nations Office of Legal Affairs has expressed the view that United Nations forces are bound only by their Security Council mandate and are not legally obliged to uphold the provisions of the Geneva Conventions.⁶⁶ The Office of Legal Affairs has argued that the role of the United Nations is to carry out the will of the international community as expressed by its Security Council Resolutions.⁶⁷ This is an unnecessary argument as observing provisions of the Geneva Conventions in no way impede the work of the United Nations. On the contrary, an argument can be made that observing the conventions would enhance the image of United Nations peacekeepers in the eyes of the populations in conflict areas and act as a preventive and deterrent for the commission of abuses prohibited by the conventions.

The United Nations has since modified its position. In the 1993 Agreement on the Status of the United Nations Assistance Mission for Rwanda, the United Nations undertook, for the first time, to ensure that the United Nations forces would conduct operations with full respect for the principles and spirit of the humanitarian conventions applicable to the conduct of military personnel, including the four Geneva Conventions of 1949, their two additional protocols of 1977 and the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.⁶⁸ This was largely because when questions arose concerning the legal status of the detainees held by United Nations peacekeepers and the interrogation methods exercised by them during United Nations operations in Somalia, these concerns demanded a response.⁶⁹ This eventually led to the elaboration of rules governing peacekeepers in times of conflict. In 1999, the United Nations Secretary-General at the time approved a set of rules and guidelines for United Nations peacekeepers in combat during the marking of

63. *Id.* at art. 77.

64. The Geneva Conventions are multilateral, international treaties to which only states may be parties. *See, e.g.*, Protocol I, *supra* note 61, at art. 2(c) (interchangeably using "parties" and "states").

65. Gantz, *supra* note 7, at 247.

66. Roy Gutman, *United Nations and the Geneva Conventions*, CRIMES OF WAR: A TO Z GUIDE, <http://www.crimesofwar.org/thebook/un-geneva.html> (quoting a memo by Stephen Katz, United Nations Office of Legal Affairs).

67. *Id.*

68. Agreement on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR), ¶ 7(a), 1748 U.N.T.S. 18, U.N. Sales No. I-30482 (Nov. 5, 1993), available at http://untreaty.un.org/unts/120001_144071/12/4/00009649.pdf.

69. Daphna Shrager, *UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage*, 94 AM. J. INT'L L 406, 407 (2000).

the fifty years of the signing of the Geneva Conventions.⁷⁰ The approval of the United Nations rules on the fiftieth anniversary of the Geneva Conventions was an important symbolic act of support for the conventions and all of what they stand for. The United Nations rules contain all the norms articulated in the Geneva Conventions. Therefore, the United Nations can now be regarded as having effectively “joined” the conventions by incorporating their contents into its set of rules and guidelines.⁷¹ This means that to the extent that the United Nations guidelines incorporate Geneva Convention norms, United Nations peacekeepers can be said to be governed by them.

International humanitarian law protections provided to women and girls in times of armed conflict is complemented by international human rights law protections. For example, in a provision that centers on violence against women, the Program of Action adopted at the Vienna Human Rights Conference asserted that violations against women in conflict situations, including murder, systematic rape, sexual slavery and forced pregnancy, constitute breaches of international human rights norms.⁷² Human rights norms are particularly significant in the context of non-international armed conflicts where the protection afforded by the conventional humanitarian law is more limited. Legal protection is available under the Universal Declaration of Human Rights,⁷³ the International Covenant on Civil and Political Rights,⁷⁴ the International Convention on the Elimination of All Forms of Racial Discrimination,⁷⁵ the International Covenants on Economic Social and Cultural Rights,⁷⁶ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁷⁷ Under the Convention Against Torture, there is an affirmative duty on states to prevent and enforce laws against torture and to extradite perpetrators, if necessary.⁷⁸ The Convention on the Elimination of All Forms of Discrimination Against Women expressly addresses issues such as trafficking in women and girls and the exploitation of women through prostitution.⁷⁹ Article 19 of the

70. The Secretary-General, *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, U.N. Doc. ST/SGB/1999/13 (Aug. 6, 1999).

71. U.N. Joins Geneva Conventions After 50 Years, KYODO NEWS INTERNATIONAL, Aug. 16, 1999, http://findarticles.com/p/articles/mi_m0XPQ/is_1999_August_16/ai_55496702.

72. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (July 12, 1993).

73. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (Dec. 10, 1948). Article 5 prohibits torture, cruel, inhuman, or degrading treatment or punishment.

74. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16 at 52, U.N. Doc. A/6316 (Dec. 16, 1966), 993 U.N.T.S. 171, (Mar. 23, 1976).

75. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 660 U.N.T.S. 195 (Dec. 21, 1965).

76. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, U.N. Doc. A/6316, 993 U.N.T.S. 3 (Dec. 16, 1966).

77. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/39/51 (June 26, 1987).

78. *Id.* at art. 7.1.

79. Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], G.A. Res. 34/180, 34 U.N. GAOR Supp. No. 46 at 193, U.N. Doc. A/34/46, art. 6 (Sept.

Convention on the Rights of the Child requires states to take all appropriate legislative, administrative, social, and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation including sexual abuse.⁸⁰

Additionally, specific protection is provided for children in the Convention on the Rights of the Child.⁸¹ For instance, Article 38 requires states to respect international humanitarian laws applicable to children in armed conflicts and to take all feasible measures to ensure protection and care of children who are affected by armed conflict.⁸² Further protections are provided by the Optional Protocol to the Convention on the Rights of the Child, which prohibits the sale of children, child prostitution, and child pornography.⁸³ Trafficking in women and girls is specifically addressed by international law. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted by the General Assembly in 1949.⁸⁴ The United Nations Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, prohibits trafficking of persons.⁸⁵

Regional human rights systems have also made major contributions to the promotion of international law norms that protect women and girls against sexual violence. Article 19 of the American Convention on Human Rights is designed to protect children's rights and prohibits discrimination.⁸⁶ The European Convention likewise prohibits discrimination and prohibits torture.⁸⁷ Similarly, the African Charter of Human and Peoples Rights prohibits discrimination and torture.⁸⁸ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa has extensive provisions which guarantee women's rights including a condemnation of any harmful practices and behavior

3, 1981). Article 6 states that "state parties shall take appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of women."

80. Convention on the Rights of the Child, G.A. Res. 44/25, Annex, 44 U.N. GAOR Supp. No. 49 at 167, U.N. Doc. A/44/49 (Nov. 20, 1989).

81. *Id.*

82. *Id.* at art. 38.

83. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263, U.N. Doc. A/54/49 (May 25, 2000).

84. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317 (IV), U.N. Doc. A/RES/317, 96 U.N.T.S. 271 (Dec. 2, 1949).

85. U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex I, 55 U.N. GAOR, Supp. No. 49 at 44, U.N. Doc. A/45/49 (Nov. 15, 2000); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention against Transnational Organized Crime, G.A. Res. 55/25, Annex II, 55 U.N. GAOR, Supp. No. 49 at 60, U.N. Doc. A/45/49 (2000).

86. American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, OEA/Ser.L./V/II.23, doc. 21 rev. 2 (July 18, 1978).

87. European Convention for the Prot. of Human Rights and Fundamental Freedoms [ECHR], arts. 3, 14, 213 U.N.T.S. 222 (Nov. 4, 1950).

88. African Charter on Human and Peoples' Rights, arts. 5, 18, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

which negatively affect the fundamental rights of women and girls.⁸⁹ Additionally, the Inter-American Court of Human Rights in the case of *Mejia v. Peru*⁹⁰ and the European Court of Human Rights in the case of *Aydin v. Turkey*⁹¹ specifically recognized rape as torture. Finally, domestic legal systems have developed tremendously in their recognition of sexual violence. In some states, this was reflected in the beginning of the recognition of crimes of sexual violence in domestic courts.⁹² In other states, this was reflected through the transformation of the definition of certain sexual crimes, such as defining rape to include marital rape. For example in the United Kingdom, there was no such thing as marital rape until 1991 when *R. v. R* a House of Lords decision changed the law.⁹³ International law, therefore, is replete with global instruments that prohibit gender violence and require states to protect women and girls in times of peace and during conflicts.

Unfortunately, the growing recognition of sexual violence as both a violation of women's rights and as a crime at both the international and domestic levels has not necessarily been accompanied by a decrease in the occurrence of sexual violence. This is especially evident in conflict areas. A recent Human Rights Watch report on the Democratic Republic of the Congo, confirms the continued prevalence of violence against women and underscores the need for increased efforts to deal with violence against women. It reports that tens of thousands of women and girls in the eastern part of the country have suffered crimes of sexual violence during the past five years of armed conflict.⁹⁴

89. Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, July 11, 2003, OAU/LEG/EXP/AFCHPR/PROT (III).

90. *Mejia v. Peru*, Case 10.970, Inter-Am. C.H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc. 7 (1996).

91. *Aydin v. Turkey*, 1997-VI Eur. Ct. H.R. 1866, 25 Eur. H.R. Rep. 251 (1997).

92. Estelle Zinsstag, *Sexual Violence against Women in Armed Conflicts: Standard Responses and New Ideas*, 5 SOC. POL'Y & SOC'Y 137, 140-44 (2006); The U.N. High Comm'r for Human Rights [UNHCHR], *Expert Workshop Report on Strengthening the Protection of Women from Torture* (Dec. 24, 2004), available at <http://www2.ohchr.org/english/issues/torture/rapporteur/issuesfocus.htm>; Amnesty Int'l USA, *Women's Human Rights: Domestic Violence as Torture* (2007), <http://www.amnestyusa.org/women/violence/domesticviolence.html>.

93. *R. V. R.*, [1992] 1 A.C. 599 (H.L.). In this case, the House of Lords held that "there was no longer a rule of law that a wife was deemed to have consented irrevocably to sexual intercourse with her husband and therefore a husband could be convicted of rape or attempted rape of his wife where she had withdrawn her consent to sexual intercourse."

94. Human Rights Watch, *Democratic Republic of Congo, Seeking Justice: The Prosecution of Sexual Violence in the Congo War: Summary* (Mar. 2005), <http://www.hrw.org/reports/2005/drc0305>.

II.

THE NATURE AND EXTENT OF THE SEXUAL ABUSE PROBLEM IN
PEACEKEEPING OPERATIONS

Allegations of peacekeepers and aid workers engaging in sexual abuse and exploitation first surfaced and grabbed the world's attention in late November 2001.⁹⁵ These claims were made in a report by two consultants who had been commissioned by the United Nations High Commission for Refugees (UNHCR) and Save the Children (UK) to study the question of sexual exploitation and violence in the refugee communities in Guinea, Liberia, and Sierra Leone.⁹⁶ The report alleged widespread sexual exploitation and sexual abuse by aid workers in the three countries.⁹⁷ Although a subsequent investigation by the United Nations Office of Internal Oversight Services (OIOS) was unable to confirm the specific cases contained in the consultants' report, it did indicate that the problem of sexual exploitation was real.⁹⁸ It observed that conditions in the camps and in refugee communities in the three countries made refugees vulnerable to sexual and other forms of exploitation.⁹⁹ This led the General Assembly to consider the matter and subsequently adopt Resolution 57/306 entitled the Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa.¹⁰⁰ In the Resolution, the General Assembly requested the Secretary-General to, *inter alia*, maintain and report on investigations into sexual exploitation and related offenses by humanitarian and peacekeeping personnel in peacekeeping operations and all relevant actions taken by the United Nations to address the violations.¹⁰¹ The Department of Peacekeeping reported 24 cases in its 2003 report.¹⁰² In five of these cases, the alleged perpetrators were United Nations civilian personnel accused of serious misconduct and appropriate disciplinary action was taken.¹⁰³ Military personnel were allegedly involved in 19 cases, but

95. U.N. High Comm'r for Refugees [UNHCR] & Save the Children-UK, *Note for Implementing and Operational Partners on Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone* (Feb. 2002), <http://www.unhcr.org/cgi-bin/texis/vtx/news/openssl.pdf?id=3c7cf89a4&tbl=PARTNERS> (hereinafter UNHCR & Save the Children-UK). See also U.N. Office for the Coordination of Humanitarian Affairs, *Mano River Union: Reports that Child Refugees Sexually Exploited Shock Annan* (Feb. 27, 2002), <http://www.irinnews.org/report.aspx?reportid=30517>.

96. UNHCR & Save the Children – UK, *supra* note 95, at section III.

97. The Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, U.N. Doc. A/58/559 (Nov. 10, 2003). However, in the case of Sierra Leone, documented cases of sexual exploitation and abuse committed by humanitarian workers and peacekeepers go as far back as 1995. See Paul Higate, GENDER AND PEACEKEEPING CASE STUDIES: THE DEMOCRATIC REPUBLIC OF THE CONGO AND SIERRA LEONE (Monograph No. 91, March 2004).

98. The Secretary-General, *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services, delivered to the General Assembly*, U.N. Doc. A/57/451 (Oct. 4, 2002).

99. *Id.* at ¶¶ 29, 61.

100. G.A. Res. 57/306, U.N. Doc. A/RES/57/306 (May 22, 2003).

101. *Id.*

102. The Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, ¶ 3, U.N. Doc. A/58/777 (Apr. 23, 2004).

103. *Id.*

investigations revealed that misconduct was serious in eight cases.¹⁰⁴ In each of those cases appropriate action was taken.¹⁰⁵

In early 2004, the international media reported on the sexual exploitation and abuse of young Congolese women and girls by United Nations peacekeepers in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).¹⁰⁶ The public outcry that followed these reports led to an investigation by the United Nations Office of Oversight Services (OIOS).¹⁰⁷ The investigation found serious problems of sexual exploitation and sexual abuse in the Mission.¹⁰⁸ The allegations were substantiated by a Human Rights Watch report on sexual exploitation and abuse in Eastern Congo.¹⁰⁹ In its annual report, pursuant to General Assembly Resolution 57/306, the Secretary-General reported a total of 121 allegations of sexual abuse and exploitation in 2004 – more than double the 53 allegations reported in 2003.¹¹⁰ Forty-five percent of those allegations were reports involving sex with minors.¹¹¹ Over 31 percent involved prostitution with adult women.¹¹² In 2005, the Secretary-General reported 340 cases of abuse and sexual exploitation.¹¹³ This is a staggering increase compared to a total of 121 allegations reported in 2004 and 53 reported in 2003.¹¹⁴ The 2005 figures represented more than a threefold increase in the total number of sexual exploitation and sexual abuse allegations in peacekeeping missions.¹¹⁵ A total of 357 cases were reported in 2006.¹¹⁶ The number of sexual exploitation or sexual abuse cases reported in 2007 dropped to 59.¹¹⁷ Although the cases reported are spread across all missions, the great majority of the allegations reported originated at MONUC.¹¹⁸

The United Nations has attributed the decrease in cases recorded to progress being made in establishing a sustainable legal framework within which to

104. *Id.*

105. *Id.*

106. Jonathan Clayton & James Bone, *Sex scandal in Congo threatens to engulf UN's peacekeepers*, THE TIMES (Dec. 23, 2004), <http://www.timesonline.co.uk/tol/news/world/article405213.ece>.

107. The Secretary-General, *Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo*, U.N. Doc. A/59/661 (Jan. 5, 2005).

108. *Id.*

109. Human Rights Watch, *supra* note 94.

110. The Secretary-General, *Special measures for protection from sexual exploitation and sexual Abuse*, ¶ 9, U.N. Doc. A/59/782 (Apr. 15, 2005).

111. *Id.* at ¶ 10, Annex I.

112. *Id.*

113. *Id.*

114. The Secretary-General, *Comprehensive report prepared pursuant to General Assembly Resolution 59/296 on sexual exploitation and sexual abuse, including policy development, implementation and full justification of proposed capacity on personnel conduct issues*, ¶ 56, U.N. Doc A/60/862 (May 24, 2006).

115. *Id.*

116. The Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, ¶ 8, U.N. Doc. A/62/890 (June 25, 2008).

117. *Id.* at ¶ 11.

118. *Id.* at ¶ 8.

address sexual exploitation and abuse, preventive measures implemented by the organization, and increased awareness in the communities peacekeepers operate.¹¹⁹ It has argued that United Nations personnel and the host population are becoming more aware of UN standards of conduct and developing greater confidence in the ability of the United Nations to receive complaints and take action.¹²⁰

While acknowledging the progress made in addressing the problem and the decrease in the numbers of cases in 2007, the figures continue to reveal a serious problem of sexual exploitation and sexual abuse by peacekeepers during United Nations missions. Given the widely acknowledged fact that sexual abuse is often not reported by victims who feel powerless and are frightened and intimidated at the prospect of being confronted by investigators, the figures could very well be an under-reporting of the problem. The United Nations is under no illusion that the problem is under control. As recently as November 2007, the United Nations confirmed that it was sending home 100 Sri Lankan peacekeepers stationed in Haiti because of accusations of sexual abuse and sexual exploitation. The allegations included the abuse of underage girls and solicitation of prostitutes.¹²¹ In Côte d'Ivoire in August 2007, 800 peacekeepers were suspended on allegations of engaging in sex with minors.¹²² In 2007 there were reports that United Nations peacekeepers in southern Sudan engaged in sexual abuse and sexual exploitation of women.¹²³ Also, a June 2008 Save the Children report stated that it believed that sexual abuse is widely underreported especially with regard to children who may be afraid to come forward and report complaints to investigators.¹²⁴ In other contexts, the United Nations has acknowledged that reports from other United Nations organizations, other than peacekeeping missions, suggest chronic underreporting of allegations of sexual exploitation and abuse, in particular of minors, by United Nations personnel, as well as personnel from the international community.¹²⁵ The UN has further pointed out that the period during which systematic reporting and specific policies were implemented, from 2005 to 2007, remains relatively short.¹²⁶ Therefore, it is difficult to make a conclusive determination and analysis regarding the decrease in the number of allegations in the reporting period and whether the

119. *Id.* at ¶ 13.

120. *Id.* at ¶ 29.

121. Sri Lanka troops 'abused Haitians', BBC NEWS, Nov. 2, 2007, http://news.bbc.co.uk/2/hi/south_asia/7075866.stm.

122. Claudia Parsons, *Moroccan UN troops accused of abuse in Ivory Coast*, REUTERS, July 20, 2007, <http://www.alertnet.org/thenews/newsdesk/N20327686.htm>.

123. *Secretary-General alarmed by reports of sexual abuse by UN peacekeepers in Sudan*, UN NEWS CENTRE, Jan. 3, 2007, <http://www.un.org/apps/news/story.asp?NewsID=21152&Cr=sudan&Cr1>.

124. Save the Children, *No one to turn to: The under-reporting of child sexual exploitation and abuse by aid workers and peacekeepers* (UNHCR Refworld 2008), <http://www.unhcr.org/refworld/docid/483c2a822.html>.

125. The Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, ¶ 13, U.N. Doc. A/62/890 (June 25, 2008).

126. *Id.*

measures adopted by the United Nations are having the desired impact.¹²⁷

A major factor in the prevalence of sexual abuse and sexual exploitation cases is the fact that local populations are vulnerable to such attacks.¹²⁸ Most of the local populations in conflicts zones live in abject poverty and unemployment is extremely high. Prostitution in such environments becomes a source of income for some girls and women.¹²⁹ To some extent, especially with regard to older women, one should not totally disregard the agency of the women involved. Many older women and girls willingly engage in prostitution as a source of income and find it to be the only way to survive extreme poverty, extremely low status for women and girls, and very limited economic opportunities offered to them. In the United Nations investigation in Bunia, officers sent to the area reported that some of the girls they sought to interview refused to cooperate with the investigators out of concern that successful investigations might eliminate what they described as their only source of income and threatened those who were cooperating with investigators.¹³⁰ The economic conditions and the existence of willing participants, however should not excuse peacekeepers sent to conflict areas to protect the local populations, which clearly should include protection from sexual abuse and sexual exploitation.

While these conditions certainly foster situations in which sexual abuse occurs or in which the likelihood of sexual abuse may increase, a contributing factor is that peacekeepers commit these violations because they believe they can get away with it. In a recent case, the Democratic Republic of the Congo government arrested Dadier Bourguet, a mechanic employed with the United Nations Peacekeeping Mission in Eastern Congo and turned him over to the French authorities.¹³¹ In his interrogation with French police he admitted to having had sexual relations with 24 girls.¹³² Asked further as to why he did it he replied that "over there, the colonial spirit persists. The white man gets what he wants."¹³³ The fact that sexual violence, exploitation and abuse occur on a comparatively widespread basis in conflict areas indicates that the peacekeepers committing these acts either do not view the acts they engage in as wrong or that they fear no serious negative repercussions for their actions. Accountability is therefore at the core of addressing the problem of sexual exploitation and abuse by peacekeepers.

Writing about sexual violence in armed conflicts, Estelle Zinsstag has similarly identified impunity as a major contributing factor enabling abuse to occur

127. *Id.*

128. Inter-Agency Standing Committee, *Report of the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises*, ¶ 6 (June 13, 2002), <http://www.unicef.org/emerg/files/IASCTFReport.pdf>.

129. *Id.* See also The Secretary General, *Special measures for protection from sexual exploitation and sexual abuse*, U.N. Doc. A/58/559 (Nov. 10, 2003).

130. *Bunia Report*, *supra* note 15, at ¶ 13.

131. *Ex-UN Employee on trial in France for raping African girls*, AFP, Sept. 9, 2008, <http://afp.google.com/article/ALeqM5jKxmjS-sf6O8LAU7pEoQCRmydXVA>.

132. *Id.*

133. *Id.*

and consequently urged a three-pronged approach encompassing accountability, elimination of impunity, and deterrence to limit incidents of abuse.¹³⁴ As described by Zinsstag, accountability would be achieved by ensuring that the perpetrators of sexual abuse and sexual exploitation answer for their crimes by making them publicly acknowledge their criminal responsibility for the acts they committed.¹³⁵ In this regard, the elimination of impunity would require taking measures that ensure that appropriate action will be taken so that perpetrators of sexual abuse and sexual exploitation are prosecuted and receive appropriate punishment. Finally, she anticipates that the elimination of impunity would deter others from committing similar crimes in the future.¹³⁶ In addition to these procedural remedies, there is clearly a need to take action to end conflicts and promote sustainable economic development, thereby reducing the underlying vulnerability of local people to sexual abuse and sexual exploitation by foreign forces. This would involve engaging all potential stakeholders to address the social and economic problems that lead girls and women into prostitution, and provision of employment should be on top of this agenda.

Like elsewhere in the world, and as the United Nations Report on the Congo observed, prostitution is driven by the simple economic theory of “supply and demand.”¹³⁷ In many peacekeeping missions, there is substantial demand for peacekeepers, and other United Nations personnel among the local population. All have a significantly higher income levels than the local population, whose dire economic situation means that there is always going to be an ample supply of girls and young women offering sex in exchange for money for peacekeepers willing to pay.¹³⁸ They often have access to resources (in some missions special shops exist for peacekeepers), which are a source of envy among the locals. By virtue of their higher social and economic position, the peacekeepers can take advantage of a local population with little or no means of its own.¹³⁹ In almost all peacekeeping operational zones there is little or no economic opportunity for the local people to earn money to support themselves. A United Nations report sent to interview victims of sexual violence in Bunia found that most of the victims were destitute and had no education or training in employable skills.¹⁴⁰ As Jasmine Whitebread, Chief Executive of Save the Children UK has observed, “organizations in the field need to make sure that selling her body is not the only way a young girl can feed herself or her family.”¹⁴¹

134. Zinsstag, *supra* note 92, at 139.

135. *Id.*

136. *Id.*

137. *Bunia Report*, *supra* note 15, at ¶ 26.

138. *Id.*

139. *Id.* at ¶ 20.

140. *Id.* at ¶ 11.

141. Jonas Hagen, *Fighting Sexual Exploitation and Abuse by UN Peacekeepers*, UN CHRONICLE ONLINE EDITION (2006), http://www.un.org/Pubs/chronicle/2006/webArticles/121306_unp.htm.

Measures to address the problem of sexual exploitation and sexual abuse of women and girls by peacekeepers will have to be comprehensive and include measures that address poverty in post-conflict societies, the creation of jobs, prosecutions of all perpetrators, and taking necessary measures to ensure that individual women and girls are not subjected to sexual exploitation and abuse.

III.

UNITED NATIONS RESPONSES TO SEXUAL ABUSE IN PEACEKEEPING MISSIONS

Various United Nations texts define what amounts to sexual abuse and sexual exploitation. The MONUC Code of Conduct defines an act of sexual abuse and/or exploitation as (a) any exchange of money, employment, goods or services for sexual intercourse, (b) sexual activity with a person under the age of 18, or (c) other sexual misconduct that has a detrimental effect on the image, credibility, impartiality or integrity of the United Nations.¹⁴² A more comprehensive definition is promulgated by the Secretary-General in a 2003 bulletin addressed to all staff of the United Nations, including staff of separately administered organs and programs on special measures for protection from sexual exploitation and sexual abuse.¹⁴³ The bulletin defines sexual abuse and sexual exploitation as two different concepts and violations. It defines sexual exploitation as “any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”¹⁴⁴ Sexual abuse is defined as an “actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”¹⁴⁵ These are both comprehensive approaches, which criminalize any form of sexual relations in the context of peacekeeping operations regardless of consent.

The core elements of the definitions include (a) sexual relations in a situation where one takes advantage of the victim regardless of the age of the victim or (b) sexual relations where the victim is under eighteen years of age. Consent is immaterial where it is obtained under the circumstances of peacekeeping because the perpetrators are there to protect the victim. The rationale for this approach is that in obtaining sex or sexual favors from vulnerable victims, the peacekeepers abuse their position of power. No doubt that under this approach peacekeepers are held to a higher standard of morality than ordinary persons. This is because they are in a position of trust with regard to the local population and additionally their economic situation is vastly superior to that of the local people. Their jobs are to advance peace and protect the local population and not exploit them.

142. *Bunia Report*, *supra* note 15, at ¶ 19.

143. The Secretary-General, *Secretary-General's Bulletin, Special measures for protection from sexual exploitation and sexual abuse*, § 1, U.N. Doc. ST/SGB/2003/13 (Oct. 9, 2003).

144. *Id.*

145. *Id.*

The difficulty of dealing with sexual exploitation and abuse in peacekeeping missions is compounded by the multi-category personnel structure of United Nations peacekeeping missions.¹⁴⁶ Not only are peacekeeping missions composed of troops from different states, so that the troops remain members of their respective armed forces and do not constitute an independent UN army with serious consequences for the implementation of disciplinary measures, peacekeeping missions are also comprised of complex categories. Typically peacekeeping operations include five broad categories of personnel: (i) members of national military contingents and military officers, (ii) United Nations civilian police and military observers, (iii) United Nations civilian staff, (iv) United Nations volunteers, and (v) individual contractors.¹⁴⁷ Different categories of staff and different organizations are typically subject to different rules and regulations. Additionally, individual troop-contributing countries under the status of forces agreements are solely responsible for the conduct and discipline of their own troops according to their own national laws and military regulations.

The impetus for the first United Nations legislative measures to deal with sexual exploitation and sexual abuse by peacekeepers came as a result of an investigation and exposure of alleged misconduct by aid workers in West Africa in 2003.¹⁴⁸ The aid workers in charge of distributing relief food were alleged to have exchanged food for sex.¹⁴⁹ After the 2003 investigation into sexual exploitation of refugees by these aid workers, and the media outcry that accompanied it, the Secretary-General promulgated a set of rules, the “Secretary-General’s Bulletin” to govern disciplinary matters relating to sexual abuse and sexual exploitation in missions and to provide sanctions for violations.¹⁵⁰ The Bulletin applies to all United Nations staff, including staff of separately administered organs and programs of the United Nations. Section 2 of the Bulletin prohibits United Nations forces from committing acts of sexual exploitation and abuse and requires troops to have a particular duty of care towards women and children and to observe international humanitarian law.¹⁵¹ It categorically states that “sexual exploitation and sexual abuse violate universally recognized international legal norms and standards and have always been unacceptable behavior and prohibited conduct for United Nations staff by the United Nations Staff Regulations and Staff Rules.”¹⁵² In order to further clarify the applicable law to

146. The Secretary-General, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*, Summary, U.N. Doc. A/59/710 (Mar. 24, 2005).

147. *Id.*

148. *Id.* at ¶ 4.

149. *Id.* at ¶ A.11.

150. See The Secretary-General, *Secretary-General’s Bulletin, Special measures for protection from sexual exploitation and sexual abuse*, U.N. Doc. ST/SGB/2003/13 (Oct. 9, 2003). The Bulletin sets out minimum standards of behavior expected of all United Nations personnel, as well as measures necessary to maintain an environment that prevents sexual exploitation and abuse. Since its issuance, all parts of the United Nations system with a field presence have been working to establish a coherent system for implementation of the Bulletin at the field level.

151. *Id.* at § 2.2.

152. *Id.* at § 3.1.

sexual abuse and sexual exploitation and protect the most vulnerable populations, especially women and children, Section 3.2 provides that:

- (a) “sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;
- (b) sexual activity with children (persons under the age of eighteen) is prohibited regardless of the age of majority or consent locally, and mistaken belief regarding the age of a child is not a defense;
- (c) exchange of money, employment, goods or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior, is prohibited, including any exchange of assistance that is due to beneficiaries of assistance;
- (d) sexual relations between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;
- (e) where a United Nations staff develops concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, he or she must report such concerns via established reporting mechanisms; and
- (f) United Nations staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse.”¹⁵³

The Bulletin goes further and outlines administrative directives and practices designed to create an environment less conducive to the commission of sexual abuse and sexual exploitation in missions. The directives and practices are to be observed and implemented in all peacekeeping missions. Under the Bulletin, United Nations managers at all levels have a particular responsibility to support and develop systems that maintain this environment.¹⁵⁴ Section 4 of the Bulletin places the responsibility for creating and maintaining an environment that prevents sexual exploitation and sexual abuse on the Head of the Department or Mission.¹⁵⁵ He or she is responsible for taking appropriate action in cases where there is reason to believe that any of the standards stipulated in the Bulletin have been violated.¹⁵⁶

The Bulletin attempts to create an administrative structure which is responsive to addressing sexual abuse and sexual exploitation violation. Missions are required to have an officer among their staff who is the focal point for receiving information about cases of sexual exploitation and sexual abuse.¹⁵⁷ Where in-

153. *Id.* at § 3.2.

154. *Id.* at § 3.2(f).

155. *Id.* at § 4.

156. *Id.* at § 4.2.

157. *Id.* at § 4.3.

investigations reveal evidence to support allegations of sexual exploitation or sexual abuse against any member of the mission, in the cases of military personnel, the cases are to be referred to national authorities of the troops involved for criminal prosecution.¹⁵⁸ A major drawback of the Bulletin is the fact that it is not legally binding on uniformed personnel, as they fall under the jurisdiction of their own governments. The United Nations cannot subject military personnel to United Nations disciplinary procedures. It does, however, serve as a code of conduct for them and they are made aware of it.¹⁵⁹ In order to be truly effective, therefore, the efforts within the United Nations system need to be reinforced by a demonstrated commitment on the part of national governments to take action against national military personnel and police who serve in peacekeeping operations, including punitive measures against offending personnel.

Additional rules to govern peacekeeping missions were developed in 2005. The second impetus by the United Nations to develop further measures to deal with sexual abuse and sexual exploitation by peacekeepers by the United Nations happened in 2004. In that year, there was intense international media coverage of the involvement of peacekeepers in widespread sexual abuse and sexual exploitation of girls and women in the eastern Congo.¹⁶⁰ Following these allegations the United Nations began a review process to determine the nature of the problem and examine further action that could be taken to address the problem.¹⁶¹ The Secretary-General asked Prince Zeid Hussein, Jordan's Ambassador to the United Nations to travel to the eastern Congo to investigate the allegations reported in the media and requested him to undertake a comprehensive review of United Nations measures on the issue of sexual abuse and exploitation by peacekeepers and make recommendations on how to deal with the problem.¹⁶² Prince Zeid Hussein's report recommended a number of new measures, including the following:

- The application of all rules set out in the Bulletin to all categories of United Nations peacekeeping personnel, including civilian police, military observers, and members of national contingents, United Nations volunteers, consultants and individual contractors.¹⁶³
- The wide publication among United Nations personnel of the Bulletin and the "Ten Rules: Code of Personal Conduct for Blue Helmets" and "We are United Nations", United Nations codes for peacekeepers.¹⁶⁴

158. *Id.* at § 5.

159. See The Secretary-General, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*, ¶ A.30, U.N. Doc. A/59/710 (Mar. 24, 2005).

160. Jonathan Clayton & James Bone, *Sex Scandal in Congo threatens to engulf UN's peacekeepers*, THE TIMES (Dec. 23, 2004), <http://www.timesonline.co.uk/tol/news/world/article405213.ece>.

161. See The Secretary-General, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*, U.N. Doc. A/59/710 (Mar. 24, 2005).

162. *Id.*

163. *Id.* at ¶ 15-18.

164. *Id.* at ¶ 26.

- The inclusion of the Bulletin and the above rules of conduct in each memorandum of understanding signed by the United Nations with each troop-contributing country.¹⁶⁵
- Ensuring that troop-contributing countries are obligated to guarantee that the Bulletin and the rules of conduct are binding on the military members of their national contingents.¹⁶⁶
- The issuance of the Bulletin rules and the other codes in card form to all contingents and to the troop-contributing countries.¹⁶⁷
- The publication of the Bulletin rules and the other codes of conduct in the languages of the contingents.¹⁶⁸
- The establishment of a permanent professional investigative capacity to investigate complex cases of serious misconduct, including sexual exploitation and abuse.
- The participation of an expert in military law from a troop-contributing country concerned as a member of any investigation of members of its contingent in order to improve the chances of the prosecution of perpetrators in the home country.¹⁶⁹
- Holding of on-site court martial by troop-contributing countries, since that would facilitate access to witnesses and evidence in the peacekeeping area.¹⁷⁰

In addition the report recommended a series of preventive measures to help eliminate sexual exploitation and abuse in peacekeeping missions, which included extensive training and sensitizing of troops to issues of violence against women, an effective program of outreach to the local community, a data collection system to track the investigation and resolution of allegations of sexual exploitation and abuse, and the establishment of a few full-time positions at headquarters and in the field to coordinate action on sexual abuse and sexual exploitation issues in missions.¹⁷¹ The following administrative recommendations were made:

- In order to ensure accountability of managers, the report recommended that effective implementation of measures to eliminate sexual exploitation and abuse should be made part of the performance goals and evaluation of managers and commanders.¹⁷²
- On individual disciplinary accountability, there should be strict disciplinary accountability for peacekeeping personnel who violate United Nations rules against sexual exploitation and sexual abuse by labeling

165. *Id.* at ¶ 25.

166. *Id.* at ¶¶ 24, 25.

167. *Id.* at ¶ 26.

168. *Id.*

169. *Id.* at ¶¶ 32, 33.

170. *Id.* at ¶¶ 35, 36.

171. *Id.* at ¶¶ 40, 58, 62.

172. *Id.* at ¶ 65.

such conduct as serious misconduct, which invites dismissal from United Nations service.¹⁷³

- It further recommended that the model memorandum of understanding between the United Nations and troop-contributing countries should provide that, if a Department of Peacekeeping Operations investigation concluded that a member of their contingent committed an act of sexual exploitation or abuse, the troop-contributing country must agree to forward the case to its competent national or military authorities to be considered for prosecution in accordance with its laws.¹⁷⁴ The model agreement should require troop contributing states to undertake to take action when a member of their military has violated standards set in the 2003 Bulletin.¹⁷⁵ The country must also report the results to the Secretary-General.¹⁷⁶
- It also proposed that those who commit sexual abuse and sexual exploitation should be held financially accountable for harm caused to victims.¹⁷⁷ In particular, the General Assembly should request the Secretary-General to require DNA and other tests to establish paternity in appropriate cases so as to ensure that peacekeeping personnel can be obligated to provide child support to the babies that they father and abandon.¹⁷⁸
- The report recommended that the memorandum of understanding between troop-contributing countries and the United Nations should specifically provide that troop-contributing countries must ensure that their contingents are obliged to respect local law.¹⁷⁹
- Finally, the report recommended that the model of this memorandum of understanding between the United Nations and the troop-contributing country should require the troop-contributing country to report on any action taken by it on cases referred to it as result of the United Nations investigations within 120 days after the case has been referred to it.¹⁸⁰

As can be seen from the United Nations measures discussed above the response of the United Nations is to first ensure the punishment and prosecution of any staff guilty of sexual abuse and sexual exploitation and second, to take preventive measures. On the preventive level, the Department of Peacekeeping has created and staffed conduct and discipline units in peacekeeping missions to raise awareness of sexual exploitation and sexual abuse issues and to provide on

173. *Id.* at ¶ 91.

174. *Id.* at ¶ 79.

175. *Id.* at ¶ 71.

176. *Id.* at ¶ 92.

177. *Id.* at ¶ 94.

178. *Id.* at ¶ 76.

179. *Id.* at ¶ 92.

180. *Id.* at ¶ 79.

the ground training to both peacekeepers and United Nations staff.¹⁸¹ Also, the Secretary-General has required the application of the uniform code of conduct on sexual exploitation and sexual abuse, which is set out in the Secretary-General's Bulletin.¹⁸² To promote awareness, this uniform code of conduct is now written into contracts for experts, volunteers, consultants and contractors.¹⁸³ The code of conduct is signed by all United Nations personnel, including police and military observers upon arrival in a mission area.¹⁸⁴ On the facilitation of the punishment of the perpetrators of sexual abuse and sexual exploitation, Resolution 59/287 mandates the United Nations Office of Internal Oversight Services to conduct investigations into allegations of sexual exploitation and sexual abuse by staff members and other persons engaged in activities under the authority of the United Nations.¹⁸⁵ While non-military personnel found guilty are punished immediately by the United Nations, punishment for military personnel unfortunately involves informing the respective troop-contributing countries and repatriating the soldiers to their home countries.¹⁸⁶

This leads us in the next section to an examination of the prospects and effectiveness of prosecutions at both host state and contributing state levels. Explanations for sexual exploitation and abuse are varied. On the part of the victims, these explanations include poverty and vulnerability, unemployment, and cultures under which women's roles are submissive. While these conditions certainly foster situations in which sexual abuse may occur or one in which the likelihood of sexual abuse may increase, a significant reason that these incidents do in fact occur is that peacekeepers can commit these violations more or less with impunity. Peacekeepers have little reason to fear any criminal liability for their actions. Potential criminal individual liability for United Nations peacekeepers is severely limited by their unique situation that grants them immunity from any type of criminal prosecution in the mission area by the United Nations or the host state, and which unfortunately shields them from criminal liability for sexual abuse and sexual exploitation. In addition, because the necessary legal infrastructure is lacking, the host states are generally incapable of prosecuting United Nations peacekeepers anyway, and troop-contributing states are likewise unable, for different reasons discussed later, or unwilling to prosecute their own nationals for sexually abusive acts committed abroad while on peacekeeping missions. The United Nations, also for practical and legal reasons, is

181. See *Bunia Report*, *supra* note 15, at ¶ 29.

182. The Secretary-General, *Secretary-General's Bulletin, Special measures for protection from sexual exploitation and sexual abuse*, § 1, U.N. Doc. ST/SGB/2003/13 (Oct. 9, 2003).

183. *Id.*

184. See The Secretary-General, *Special measures for protection from sexual exploitation and sexual abuse*, U.N. Doc. A/62/890 (June 25, 2008). See also Under-Secretary-General for Management, *Administrative instruction amending administrative instruction ST/AI/1999/7*, U.N. Doc. ST/AI/1999/7/Amend.1 (Mar. 15, 2006) (discussing general conditions of contracts for the services of consultants or individual contractors).

185. G.A. Res. 59/287, U.N. Doc. A/RES/59/287 (Apr. 21, 2005).

186. The Secretary-General, *Special measures for protection from sexual exploitation and abuse*, ¶ 9, U.N. Doc. A/62/890 (June 25, 2008).

extremely limited in its ability to punish peacekeepers. The problems associated with prosecutions in the host state and in troop-contributing countries in the context of the prevailing legal environment are discussed below.

A. Prosecution in the Host State

Prosecuting peacekeepers for sexual abuses committed in the state hosting the peacekeeping operation has several advantages. First, the prosecution would occur in the territory in which the act occurred. Not only would this permit the victim to appreciate that justice was done, it would also serve as deterrence and would facilitate evidence-gathering and the provision and securing of witnesses to testify.

However, this mode of prosecution presents several challenges. For example, gaining custody over peacekeepers may be challenging. Even if the courts of the host state assert personal jurisdiction based on territorial jurisdiction, once a peacekeeper leaves the host state, it may be difficult to regain custody of the peacekeeper. Typically, peacekeeping rotations serve for a duration of approximately six months, so the time-frame within which the prosecution may be brought is extremely short. Extradition is a possibility but one that is unlikely to be helpful. For one thing, the conduct that is the subject of the charges may not be criminal in the troop-contributing country (that is prostitution between consenting adults is not a crime in several jurisdictions). Secondly, the age of consent varies among jurisdictions¹⁸⁷, and thirdly, some jurisdictions, like Austria, have laws that prohibit the extradition of nationals.¹⁸⁸ Still another problem might be that many countries provide for the trial of military officers and personnel by military tribunals for offenses committed within the context of military duties. These courts might be difficult to access for private individuals and are not particularly suitable for trying sexual offenses.

The state's ability to prosecute might also be hindered by the fact that peacekeepers have immunity from prosecution. While the founders of the United Nations did not intend that the privileges and immunities of officials and experts on mission should constitute a shield from national criminal prosecution for crimes committed in a state hosting a United Nations operation where crimes have clearly been committed, the highest judicial body has held that personnel

187. For example, "the law sets the age of marriage for girls, at 14 in Sierra Leone, 16 in Liberia and is silent on this matter in Guinea. Culturally, the definition of a child is determined more by custom than formal law, which generally allows young women to marry at 14." Dianne Otto, *Making sense of zero tolerance policies in peacekeeping sexual economies*, in *Sexual and the Law: Feminist Engagements* 259-282, (Vanessa Munro & Carl Stychin, eds., 2007), http://cigj.anu.edu.au/cigj/link_documents/Survival_Sex.pdf; see also Jestina Doe-Anderson, *Beyond the War: Liberian Women's Other Horror Stories*, THE PERSPECTIVE, June 14, 2006.

188. The Austrian Law on Extradition and Mutual Assistance in Criminal Matters which entered into force in 1980 and which was at the time the first instrument in Europe to cover all forms of international cooperation contains an absolute prohibition of extradition of nationals. See Extradition and Mutual Assistance in Criminal Matters Act, Auslieferungs- und Rechtshilfegesetz (ARHG), Federal Law Gazette No. 59/1979, art. 12 (Dec. 4, 1979).

employed directly by the United Nations on mission receive functional immunity from prosecution for acts committed while executing their duties.¹⁸⁹ Although sexual abuse and sexual exploitation are clearly not within the scope of duties of a peacekeeper, the host state would nonetheless have to seek to have immunity waived before any prosecution could take place in the host state. Besides even where the United Nations would like to waive immunity it might be difficult to do so in states where the United Nations believes the legal system does not meet the minimum standards of a judicial system prescribed by international human rights law. Deficiencies in due process and the independence of the judiciary, for instance, might amount to subjecting a United Nations official to a kangaroo-type court.

Additionally, before any country agrees to the deployment of its troops in a peacekeeping mission it typically concludes a Status of Forces Agreement (SOFA) with the United Nations in accordance with Article 43 of the United Nations Charter.¹⁹⁰ Each agreement is negotiated separately with each troop-contributing country. The SOFA sets specific terms for the conduct, privileges, immunities and jurisdictions of the military and civilian employees on such matters as criminal and civil jurisdiction and a similar agreement is signed between the United Nations and the host state of the mission.¹⁹¹ Through the SOFA, peacekeepers contributed by states are generally immune from prosecution in host states.¹⁹² The SOFAs provide for absolute immunity for peacekeepers from local jurisdictions and establishes exclusive jurisdiction of the troop-contributing peacekeepers' nation of origin. In other words, the peacekeepers' nation has the exclusive right to prosecute members of its military. This absolute immunity was originally to be received in exchange for formal assurances by troop-contributing states that they would exercise criminal jurisdiction over their troops and consider prosecuting their troops where appropriate under the domestic laws of the troop-contributing country. The United Nations does not always receive these formal assurances.¹⁹³ In most cases, the United Nations does not

189. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of United Nations (The Mazilu Case), 1989 I.C.J. Rep. 177, 29 ILM 98 (Dec. 15, 1989).

190. U.N. Charter art. 43 states: "All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including the rights of passage, necessary for the purpose of maintaining international peace and security."

191. The Secretary-General, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*, Summary, ¶ 78, U.N. Doc. A/59/710 (Mar. 24, 2005). See also Press Release, U.N., Secretary-General Says Signing of Status of Forces Agreement 'Positive Step Forward' in Effort to Deploy Darfur Mission, U.N. Doc. SG/SM/11414, AFR/165, PKO/176 (Feb. 14, 2008).

192. See Jehan Khaleeli & Sarah Martin, *Addressing the Sexual Misconduct of Peacekeepers*, REFUGEES INTERNATIONAL, Sept. 23, 2004, <http://www.refugeesinternational.org/content/article/detail/4047>.

193. See Karishma Rajoo, *Sexual Abuse and Exploitation: Power Tools in Peacekeeping Missions*, AFRICAN CENTRE FOR THE CONSTRUCTIVE RESOLUTION OF DISPUTES 17, 22 (2005), http://www.trainingforpeace.org/pubs/accord/ctrends405/ct4_2005_pgs17_23.pdf.

press for them.¹⁹⁴ This could be cured by the adoption of a Security Council Resolution requiring states to undertake the persecution of perpetrators of sexual crimes in the SOFA and to provide data on actions taken by them against perpetrators of sexual exploitation and sexual abuse in peacekeeping missions. Such a Resolution would be mandatory on all states as long as it is adopted in the context of the maintenance of peace and security.¹⁹⁵

Even if the host state has appropriate and applicable laws with which the peacekeepers may be charged, the legal system in the host state may not be capable of prosecuting such crimes because of country conditions, such as the complete breakdown of the legal system as a result of on-going conflicts. In most such countries there is no reliable judiciary or police force to ensure prosecution and enforcement of the law. Further, as a result of corruption, the courts suffer from a crippling legitimacy crisis.¹⁹⁶ In addition, due partly to the gender bias and traditional attitudes that did not regard sexual violence during conflict as problems but rather as a fact of war that are pervasive in several countries in the world, there is frequently little political will to prosecute peacekeepers. Throughout history, women and girls have been subjected to sexual violence during conflicts. The raping of women was seen as a means for the aggressor to symbolically and physically humiliate the defeated men. To cite recent examples, throughout the genocide in Rwanda, the rape of women and girls by opposing groups was carried out, not only as an attack against these females, but as means to exercise power over and demoralize the men in the woman's family and ethnic group as well.¹⁹⁷ In Bosnia and Herzegovina, rape and sexual violence was used as a form of ethnic cleansing.¹⁹⁸ These prejudices largely explain why it took a long time for the United Nations and troop contributing countries to recognize the scale of the problem of sexual exploitation and sexual abuse in missions. The problem of sexual abuse and sexual exploitation has been known by the United Nations since at least the Namibia (1989) and Cambodia (1992) peace keeping operations.¹⁹⁹ The United Nations has acknowl-

194. In the case of the Congo to date, the only known prosecution has been by South Africa against two of its soldiers, and by France against a U.N. civilian staff member who has been jailed on charges of rape and making pornographic videos of children. See *U.N. Bans Peacekeepers from Sex with Congolese*, REUTERS, Feb. 10, 2005.

195. See U.N. Charter art. 48.

196. Joseph Winter, *DR Congo's Justice for Sale*, BBC NEWS, Oct. 23, 2006, <http://news.bbc.co.uk/2/hi/africa/6056396.stm>.

197. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, (Sept. 2, 1998).

198. See *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA* (Alexandra Stiglmeier ed., 1994).

199. Heidi Hudson observed that "[t]he UN Transitional Authority in Cambodia (UNTAC) and the United Nations Transitional Assistance Group (UNTAG) have become notorious for the conduct of male peacekeepers towards local women." Heidi Hudson, *Mainstreaming Gender in Peacekeeping Operations: Can Africa Learn from International Experience?*, 9 AFR. SECURITY REV. 4 (2000), <http://www.iss.co.za/pubs/asr/9No4/Hudson.html>. See also Peter Dennis, *The U.N. Preying on the Weak*, THE WASHINGTON POST, A21, Apr. 12, 2005, <http://www.washingtonpost.com/wp-dyn/articles/A45304-2005Apr11.html>.

ged as much.²⁰⁰ No United Nations security action was taken until the public outcry that followed a report by Save the Children UK alleging widespread sexual exploitation and abuse by peace keepers and aid agencies and other humanitarian personnel in West Africa in 2001.²⁰¹

B. Prosecution in Troop-Contributing States

Troop-contributing states are responsible for the conduct and discipline of their troops. Under a typical SOFA signed with the United Nations, troop-contributing states retain exclusive criminal jurisdiction over their troops and the troops remain an integral part of their national military force.²⁰² The UN is, therefore, limited in what it can do once a soldier engages in sexual abuse or sexual exploitation. It may order suspension, or at worst, repatriation to the home state for those found guilty of sexual abuse or sexual exploitation. Because the United Nations' ability to discipline its peacekeeping military personnel is limited, and given the general inability of host states to prosecute United Nations peacekeeping personnel for reasons discussed above, troop-contributing states are in the best position to prosecute their nationals who serve as peacekeepers and commit sexual abuse or sexual exploitation abroad. Furthermore, according to international human rights jurisprudence states have a duty to prosecute nationals who commit abuses, especially where the abuses amount to a violation of international human rights norms.²⁰³ Some of the crimes amounting to a war crime, such as torture and rape, are international crimes and breaches of the Geneva Conventions and could therefore be prosecuted in the International Criminal Court where a state is party to the International Criminal Court Statute and conditions for the exercise of the International Criminal Court's jurisdiction are met. Alternatively, the crimes can be prosecuted in a third-party state under the concept of universal jurisdiction provided that the third-party state has passed legislation empowering its courts to hear cases under universal jurisdiction.²⁰⁴

200. The Secretary-General, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*, Summary, ¶ 3, U.N. Doc. A/59/710 (Mar. 24, 2005) ("United Nations, media and human rights organizations in particular have documented the involvement of peacekeeping personnel in sexual exploitation and abuse in operations ranging from those in Bosnia and Herzegovina and Kosovo in the early 1990s to Cambodia and Timor-Leste in the early and late 1990s to West Africa in 2002").

201. The Secretary-General, *Investigation into sexual exploitation of refugees by aid workers in West Africa*, U.N. Doc. A/57/465 (Oct. 11, 2002); UNHCR & Save the Children – UK, *supra* note 95.

202. Rajoo, *supra* note 193, at 22.

203. *Velasquez v. Honduras*, Inter-Am. C.H.R. (Ser. C) No. 4 (1988). In this case, the Inter-American Court of Human Rights held that the obligation imposed on state parties to a human rights convention is to respect the rights and freedoms recognized by the convention, and the second obligation is to ensure the free and full exercise of the rights recognized by the convention to every person subject to its jurisdiction.

204. For a discussion of the concept of universal jurisdiction, see Beth Van Shaack & Ronald C. Slye, *INTERNATIONAL CRIMINAL LAW AND ITS ENFORCEMENT: CASES AND MATERIALS* 100 (2007).

However, it has to be recognized that the nature of peacekeeping operations contributes to the difficulties the home state encounters in prosecuting soldiers who commit acts of sexual abuse or sexual exploitation in the area of operations. Such problems, like the lack of sufficient and proper evidence to pursue prosecution in the troop-contributing state, can prove insurmountable. The evidence, when there is any tangible evidence at all, and witnesses are typically located in the host state of the peacekeeping mission. Part of the solution could be to encourage troop-contributing countries to hold field court martial proceedings in the peacekeeping zone. Further, in some countries legislation exists which could be used to litigate harm resulting from sexual abuse violations and sexual exploitation in civil courts. For example, in the United States wrongs occurring abroad may be litigated under the Alien Torts Claims Act²⁰⁵ (ATCA) or the Torture Victim Protection Act²⁰⁶ (TVPA). In the case of ATCA, the action would have to be initiated by a private person.²⁰⁷ Though this seems an unlikely event, in view of the often dire economic status of the victims and the expense involved in mounting civil litigation it is a possibility nevertheless that should not be ruled out. Finally, even if jurisdiction could be obtained in a third country, gathering evidence and obtaining custody would probably present insurmountable challenges for a third country that has no direct connection to the crimes.

C. Peacekeepers' Babies

One of the consequences of sexual abuse and exploitation is conception and birth of children from these illegal liaisons leading to the presence of abandoned "peacekeepers' babies" in mission areas – children fathered and abandoned by peacekeepers. The problem has plagued the United Nations peacekeeping missions for a long time, but like sexual exploitation and abuse, it was largely ignored until recently.²⁰⁸ It is estimated that 24,500 babies were fathered by peacekeepers in Cambodia and 6,600 children were fathered by peacekeeping soldiers serving in the United Nations mission in Liberia.²⁰⁹ A UN investigative

205. Alien Tort Statute, 28 U.S.C. §1350. The statute provides that "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." *Id.* The statute has become significant as a means of allowing American government, military and corporate leaders to be held responsible in a court of law for the human rights abuses committed as a result of their presence in a foreign country. This is regardless of whether the abuses were committed by someone within an American organization or whether the abuses were committed by a local group empowered by the presence of the American organization.

206. Torture Victim Protection Act, 106 Stat. 73 (1992). The statute allows for the filing of civil suits, in the United States, against individuals who, acting in an official capacity for any foreign nation, committed torture and/or extrajudicial killing.

207. Alien Tort Statute, *supra* note 205.

208. INT'L ALERT & WOMEN WAGING PEACE, INCLUSIVE SECURITY, SUSTAINABLE PEACE: A TOOL KIT FOR ADVOCACY AND ACTION 41 (2004).

209. Nicola Johnson, *Peace Support Operations* 33, in INCLUSIVE SECURITY, SUSTAINABLE PEACE: A TOOLKIT FOR ADVOCACY & ACTION, HUNT ALTERNATIVES FUND, http://www.huntalternatives.org/download/38_peace_support.pdf. The author observes that "[i]n Cambodia, estimates place the number of children fathered by U.N. peacekeepers at 25,000. In Li-

team sent to investigate allegations of sexual exploitation and sexual abuse in the eastern Congo reported that upon arrival in January 2006, the team met with coordinators of a local NGO who reported that some Congolese girls had given birth to babies allegedly fathered by peacekeepers.²¹⁰ The investigators themselves reported that some of the girls they interviewed in the inquiry were pregnant.²¹¹ In East Timor, Australia's *The Age* reported that United Nations peacekeepers had abandoned at least 20 babies fathered with Timorese women.²¹² *The Age* further reported, that because of a feeling of shame and embarrassment in East Timor, local women often covered up and kept secret the birth of peacekeepers' babies.²¹³ Generally peacekeepers' babies are prone to be abandoned by the fathers and are often left in a desperate financial situation.

In domestic law, fathers are made to pay child support so that the mother can use the money to maintain the child. The problem in the peacekeeping context is that the father typically lives in a different jurisdiction from the child. When he returns to his home state after his tour of duty, there is no contact between the child and the peacekeeper and the peacekeeper is often beyond the reach of host state courts. There are also problems in determining paternity, as this is often denied. Mothers of these children often go by nothing more than a first name, the unit's nationality and date of deployment. Here, the solution would seem to be to work out mechanisms to help women and girls determine paternity, for example through DNA testing, and help them trace the fathers of their children. Once they have traced them, mechanisms to ensure that legal protections exist to ensure that the peacekeepers at least financially support their children should be established. Although the Security Council could achieve this by passing a resolution requiring states to pass legislation, because of the details required in such measures this would in all probability require a convention to facilitate the execution of maintenance orders issued in peacekeeping countries in the home states of peacekeepers.²¹⁴ This would be the surest way of

beria the prevalence of children fathered by peacekeepers was considered so serious that several NGOs were established to deal with the matter. Estimates vary, but some reports project that at a minimum 6,600 children were fathered by soldiers serving in the U.N. Observer Mission in Liberia." *Id.* at 41.

210. *Bunia Report*, *supra* note 15, at ¶ 8.

211. *Id.* at ¶ 25.

212. Lindsay Murdoch, Dili, *UN's legacy of shame in Timor*, *THE AGE*, Jul. 22, 2006, <http://www.theage.com.au/news/world/uns-legacy-of-shame-in-timor/2006/07/21/1153166587803.html>.

213. *Id.*

214. A United Nations report has suggested that a model memorandum of understanding concluded between the United Nations and the troop-contributing country should be amended to enable the United Nations to deduct from future payments to the troop-contributing country the daily allowance paid to any soldier found culpable of sexual exploitation and abuse to pay the proceeds to the trust fund for victims, and to process claims for child support from victims in accordance with the laws of the troop-contributing country and that the Staff Rules should be amended to compel staff and experts on mission to make child support payments. See The Secretary-General, *Comprehensive review of the whole question of peacekeeping operations in all their aspects*, ¶ 91, U.N. Doc. A/59/710 (Mar. 24, 2005). The problem with the proposal is that it will only be effective as long as

guaranteeing that court orders issued by domestic courts are enforceable in foreign jurisdictions. The drawback with a convention is that it would only bind states that join the convention. With regard to civilian United Nations personnel, the problem is mitigated by the fact that the Secretary-General's Bulletin, entitled *Family and Child Support Obligations of Staff Members*, enabled the United Nations to honor court orders addressed to United Nations staff members for family support.²¹⁵ Unfortunately, this does not cover United Nations peacekeeping military personnel. States should allow for claims for child support to be made by the parent of a peacekeeper's child in their own courts, and provide support for the mothers of the children to make such a claim. Further, countries should be encouraged to allow such children to claim their father's nationality especially in countries where nationality laws allow that possibility.

IV. CONCLUSION

Sexual violence happens during war for the same reasons it happens during peacetime. It is a phenomenon rooted in inequality, discrimination, male domination, poverty, aggression, misogyny and the entrenched socialization of sexual myths. Therefore, the real solution to the problem is the eradication of cultural norms that undermine the dignity of women. At this stage, such a solution is a long-term strategy. In the meantime, we have to deal with the victims of sexual abuse and exploitation in missions and find other possible solutions. The impunity that exists reflects and reinforces the inequality and cultural norms that acquiesce to the inevitability of violence against women.

The irony is that in conflict zones, the social structures for the eradication of these negative cultural norms are often already destroyed by the conflict itself or are not functioning as the institutions that upheld them are no longer in place. One of the ways to tackle the problem is to create multiple opportunities for prosecution, end impunity, and prosecute all those responsible for sexual abuse and sexual exploitation. In order to increase the multiple opportunities for prosecution, there is need to require every state to criminalize sexual abuse and sexual exploitation in the context of peacekeeping missions.

States should also confer criminal jurisdiction on their courts to enable them to prosecute offenders who are alleged to have committed sexual abuse or sexual exploitation offenses outside their territorial jurisdiction. This can be achieved by a Security Council Resolution requiring states to both criminalize prohibited conduct under the Secretary-General's Bulletin and confer such juris-

the peacekeeper remains a peacekeeper and is receiving money the United Nations can withhold. Peacekeepers are with the United Nations for limited periods of time.

215. The Secretary-General, *Secretary-General's Bulletin: Family and child support obligations of staff members*, U.N. Doc. ST/SGB/1999/4 (Oct. 25, 2000); The Under-Secretary-General for Management, *Administrative instruction: Private legal obligations of staff members*, U.N. Doc. ST/AI/2000/12 (Oct. 25, 2000).

dition on their courts.²¹⁶ There is precedent for this in Resolution 1373, which was adopted on September 13, 2001, with respect to terrorism.²¹⁷ After the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Security Council unanimously adopted Resolution 1373, a wide-ranging, comprehensive Resolution with steps and strategies to combat international terrorism.²¹⁸ Under the Resolution, states are required to ensure that terrorist acts are established as serious criminal offenses in their domestic laws and regulations and that the seriousness of such acts is duly reflected in the sentences prescribed and served for the offenses.²¹⁹ In addition, the Security Council established a committee within the Council to monitor the Resolution's implementation and called on states to report on actions they had taken to that end no later than 90 days from the passage of the Resolution and thereafter at regular intervals as determined by the Security Council.²²⁰ Since Security Council Resolutions are binding on member states, the Security Council was in effect legislating for the world.²²¹

An approach similar to the Resolutions enacted after September 11 would go a long way towards reducing impunity and promoting uniformity in the handling of sexual abuse and sexual exploitation violations in peacekeeping missions. In order to ensure that states prosecute their nationals, the proposed Resolution should constitute a committee at headquarters to which states will be required to report actions they have taken with respect to their nationals who have been accused of sexual abuse or sexual exploitation along the lines of Resolution 1373's approach on the question of terrorism.²²² There is also a need to work out mechanisms that would enable children of peacekeepers to gain at least financial support from their fathers. This would in all probability require an international legal instrument to work out mechanisms for the enforcement of

216. The UN Development Fund reports that currently, 90 countries have legislative provisions against sexual harassment and 93 states prohibit trafficking of women and men. Press Conference, U.N., Press Conference on Observance of International Women's Day (Mar. 7, 2007), http://www.un.org/News/briefings/docs/2007/070307_Women.doc.htm.

217. S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 13, 2001).

218. *Id.* (discussing threats to international peace and security caused by terrorist acts).

219. *Id.* at ¶ 1 ("all States shall (b) criminalize the willful provision or collection, by means, directly or indirectly, of funds by the nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorists acts"). Paragraph 2(e) states that all States shall "ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorists acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorists acts." *Id.* at ¶ 2(e).

220. *Id.* at ¶ 6 ("Decides to establish, in accordance with rule 28 of its provisions rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable proposed by the Committee, on the steps they have taken to implement this resolution").

221. U.N. Charter art. 25 ("the members of the United nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter").

222. S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 13, 2001).

foreign child support orders and to provide assistance to the mothers of peacekeepers' babies in the filing of child support petitions in the home state of the peacekeeper fathers. As a United Nations report observed, victim assistance is an important element of a comprehensive response to the problem of sexual exploitation and abuse in peacekeeping missions.²²³

This article has examined the nature of the problem of sexual exploitation and abuse by peacekeepers in peacekeeping missions and has identified the various measures the United Nations has taken to address the problem. A major development which augurs well for addressing the problem is that the United Nations and the troop-contributing countries have recognized the gravity of the problem and its potential to undermine peacekeeping operations and have agreed on the need for measures to eradicate this scourge. While recognizing the complexity of the problem, and conceding that significant progress has been made to address the problem through codes of conduct and the investigation and punishment of perpetrators, the article finds that significant work remains to be done to ensure that there is zero tolerance of this scourge, no impunity for perpetrators of these crimes and that effective measures are taken to address the plight of victims of these crimes (especially the growing problem of peacekeepers' babies). This will require domestic and international legislation as the problem cannot be handled at one level to the exclusion of the other. The legislative approach advocated in this article should be accompanied by the promotion and adoption of policies that jump-start economies in post-conflict societies and provide economic opportunities for women and girls. This approach can go a long way to removing vulnerabilities of women and girls to sexual exploitation and abuse.

223. General Assembly, *Report of the Special Committee on Peacekeeping Operations and its Working Group on 2007 resumed session*, U.N. Doc A/61/19 (Part III) (June 12, 2007).