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## Peacekeepers as Perpetrators: Sexual Exploitation and Abuse of Women and Children in the Democratic Republic of the Congo

Susan A. Notar

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# PEACEKEEPERS AS PERPETRATORS: SEXUAL EXPLOITATION AND ABUSE OF WOMEN AND CHILDREN IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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## INTRODUCTION

The Democratic Republic of the Congo (“DRC”) is home to mineral riches<sup>1</sup> and an immense tropical rainforest containing a number of endangered species of animals.<sup>2</sup> Formerly a Belgian colony, Congo survived almost one hundred years of Belgian

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1. See Emily Wax, *In Congo, Peace Eludes Its U.N. Keepers*, WASH. POST, Mar. 28, 2005, at A12.

2. See United States Agency for International Development (“USAID”), USAID-Congo: Welcome, [http://www.usaid.gov/locations/sub-saharan\\_africa/countries/drcongo/](http://www.usaid.gov/locations/sub-saharan_africa/countries/drcongo/) (last visited Dec. 19, 2005) (providing background on the DRC and its global significance).

exploitation<sup>3</sup> before Colonel Joseph Mobutu took over the country in a coup in 1965 and changed its name to Zaire.<sup>4</sup> The DRC was known as *Zaire* from 1965 until 1997.<sup>5</sup> United States literary audiences became familiar with the nation in Joseph Conrad's *Heart of Darkness*,<sup>6</sup> and later, in the 1998 novel *The Poisonwood Bible*.<sup>7</sup> Since 1998 the DRC has been ravaged by a complex war involving the territorial interests of other African nations including Angola, Namibia, Rwanda, Uganda, and Zimbabwe, and ambitions of internecine rebel forces.<sup>8</sup>

In 1999 the United Nations Security Council authorized peacekeeping forces in the DRC and created the U.N. Mission in the Democratic Republic of Congo ("MONUC").<sup>9</sup> The majority of peacekeepers appear to perform their duties with professionalism, and some have even died during the course of their work.<sup>10</sup> The actions of others, however, have led to a spate of newspaper articles in 2004-2005 reporting rape, torture, the fathering of "peacekeeper babies" and their subsequent desertion,<sup>11</sup> and pornographic videotaping of Congolese women and children.<sup>12</sup> A report by the United Nations Office of Internal Oversight Services ("OIOS") released in March 2005 chronicled the alarming findings and yielded

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3. See ZAIRE IN PICTURES 30-38 (Lerner Geography Dept. ed. 1992).

4. See *id.* at 37-38.

5. See CITIZENS FOR GLOBAL SOLUTIONS, IN UNCHARTED WATERS: SEEKING JUSTICE BEFORE THE ATROCITIES HAVE STOPPED 14 (2004), available at [http://www.globalsolutions.org/programs/law\\_justice/icc/resources/uncharted\\_waters.pdf](http://www.globalsolutions.org/programs/law_justice/icc/resources/uncharted_waters.pdf) [hereinafter UNCHARTED WATERS] (explaining that in addition to renaming himself "Mobutu Sese Seko," Mobutu also changed the name of the country to Zaire).

6. JOSEPH CONRAD, HEART OF DARKNESS (Penguin Books 1976) (1876).

7. BARBARA KINGSOLVER, THE POISONWOOD BIBLE (1998).

8. See UNCHARTED WATERS, *supra* note 5, at 14 (tracing the violent and unstable history of the DRC).

9. See S.C. Res. 1279, U.N. Doc. S/RES/1279 (Nov. 30, 1999) (recognizing the need to halt human rights violations and other violence in the DRC).

10. See, e.g., Marc Lacey, *Militia Fighters Kill [Nine] U.N. Peacekeepers in Congo as Instability Continues*, N.Y. TIMES, Feb. 26, 2005, at A6 (noting that the peacekeepers often offer much-needed protection for DRC citizens).

11. See ELISABETH REHN & ELLEN JOHNSON SIRLEAF, WOMEN, WAR AND PEACE: THE INDEPENDENT EXPERTS' ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN'S ROLE IN PEACE-BUILDING 71 (UNIFEM 2002), available at [http://www.parliament.gov.za/pls/portal30/docs/FOLDER/PARLIAMENTARY\\_INFORMATION/PUBLICATIONS/UNIFEM/INDEX.HTM](http://www.parliament.gov.za/pls/portal30/docs/FOLDER/PARLIAMENTARY_INFORMATION/PUBLICATIONS/UNIFEM/INDEX.HTM) (explaining that, in Liberia for example, as of 2002, 6,600 children were registered as being children of peacekeepers). In Kosovo songs played on the radio warning young girls not to have children with peacekeepers. *Id.*

12. See, e.g., Marc Lacey, *In Congo War, Even Peacekeepers Add to Horror*, N.Y. TIMES, Dec. 18, 2004, at A1; Colum Lynch, *U.N. Sexual Abuse Alleged in Congo*, WASH. POST, Dec. 16, 2004, at A16; Colum Lynch, *Report on Abuse Urges DNA Tests for Peacekeepers*, WASH. POST, Mar. 25, 2005, at A15 [hereinafter *Report on Abuse*].

a wave of criticism and reform.<sup>13</sup>

In the United States, members of the 109th Congress responded by introducing bills in March 2005 addressing peacekeeper abuse of women and children, urging that the U.N. suspend payment of peacekeeping funds and the U.S. withhold military assistance to countries where there is evidence of abuse and a failure to investigate and punish the conduct.<sup>14</sup> At the request of the DRC, the International Criminal Court (“ICC”) has begun an investigation of atrocity crimes committed during the course of the war.<sup>15</sup> Because the DRC is a party to the Rome Statute creating the ICC, the court has jurisdiction over genocide, war crimes, and crimes against humanity committed after July 1, 2002, when the temporal jurisdiction of the ICC went into effect.<sup>16</sup> This is noteworthy, for the court lacks jurisdiction to investigate and prosecute crimes occurring before July 1, 2002, so that most of the crimes committed during the war would not fall within the temporal jurisdiction of the court.

The peacekeeper abuse scandal could not come at a worse time for the United Nations. In the past year it suffered blows such as the Oil-for-Food debacle, allegations of sexual harassment against the head of the United Nations High Commission for Refugees,<sup>17</sup> and calls from conservative senators in the United States Congress for United Nations Secretary General Kofi Annan to resign.<sup>18</sup>

This Article describes both the recent report and corresponding U.N. efforts to examine abuses within peacekeeping ranks in the DRC and also suggests measures of accountability to halt future abuse.

### I. THE PEACEKEEPERS

In an effort to promote stability in the DRC, in 1999 the United Nations Security Council authorized peacekeeping forces in the DRC and created the U.N. Mission in the Democratic Republic of the

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13. See *Report on Abuse*, *supra* note 12 (noting that U.N. Secretary General Kofi Annan requested an investigation into the abuses alleged in the DRC).

14. See Protection of Vulnerable Populations During Humanitarian Emergencies Act of 2005, S. 559, 109th Cong. § 305 (2005); Women and Children in Crisis and Conflict Protection Act of 2005, H.R. 1413, 109th Cong. § 305 (2005).

15. See Marc Lacey, *Novelty in Congo: U.N. Investigates a Massacre*, N.Y. TIMES, Dec. 24, 2004, at A13.

16. See UNCHARTED WATERS, *supra* note 5, at 18.

17. See Colum Lynch, *U.N. Official Quits in Harassment Case*, WASH. POST, Feb. 21, 2005, at A20 (reporting that Ruud Lubbers, Head of UNHCR, offered his letter of resignation upon pressure from Kofi Annan, after a number of employees accused him of sexual harassment).

18. See *Love at Second Sight*, ECONOMIST, Mar. 26-Apr. 1, 2005, at 31 (noting that at the end of 2004, Senator Norm Coleman (R-MN) called for Annan’s resignation because of the Oil-for-Food scandal).

Congo. Since then, the U.N. has renewed the mandate of MONUC and increased the number of peacekeeping forces in the DRC. The DRC now hosts the U.N.'s largest peacekeeping mission with 16,047 soldiers and over two thousand civilian employees.<sup>19</sup>

The peacekeeping forces have proven indispensable in protecting civilians in the DRC. They help protect thousands of civilians from the rapes, murders, and looting of armed militiamen. Peacekeepers forcibly disarm militia groups that have been terrorizing local people.<sup>20</sup> Johannes Wedenig, the head of UNICEF in Goma, DRC, reportedly said that “[m]ilitias have been attacking civilians, and if MONUC was not protecting the people there would be no one to rely on. They’d be at the mercy of the armed men, who have been raping and killing and burning villages.”<sup>21</sup>

U.N. peacekeepers perform their duties in difficult circumstances and often at great personal danger. As recently as February 2005, militia forces killed nine Bangladeshi peacekeepers in the eastern part of the DRC as they were attempting to protect a camp with thousands of people who had left their homes because of militia attacks. A total of sixty peacekeepers have been killed since the inception of the MONUC peacekeeping mission.<sup>22</sup> Later in February 2005, U.N. peacekeepers killed fifty militiamen in a battle after being fired upon by the same militia forces suspected of having killed the Bangladeshi peacekeepers.<sup>23</sup> In March 2005, the U.N. peacekeepers killed an additional thirty-eight militiamen in a day after a U.N. deadline for voluntary disarmament by the militias expired.<sup>24</sup> What is striking about the battle is that the peacekeepers were taking an armed stance, due in large part to a more aggressive Security Council mandate that allows the soldiers to protect civilians.<sup>25</sup>

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19. See MONUC, Facts and Figures (2005), <http://www.un.org/Depts/dpko/missions/monuc/facts.html> [hereinafter Facts and Figures] (stating that the peacekeepers are from a wide array of nations including Bangladesh, France, India, Morocco, Nepal, Pakistan, and South Africa, while the Special Representative of the Secretary General and Chief of the peacekeeping mission is William Lacy Swing, an American).

20. See Lacey, *supra* note 10 (explaining that peacekeepers have become more aggressive in their efforts).

21. *Id.*

22. See Facts and Figures, *supra* note 19.

23. See Emily Wax, *U.N. Troops in Congo Kill [Fifty] Militiamen in Gun Battle*, WASH. POST, Mar. 3, 2005, at A17.

24. Reuters, *U.N. Troops Kill [Thirty-eight] Militiamen in Congo Raid*, N.Y. TIMES, Apr. 2, 2005.

25. See S.C. Res. 1592, ¶ 7, U.N. Doc. S/RES/1592 (Mar. 30, 2005) (authorizing MONUC to “use all necessary means, within its capabilities and in the areas where its armed units are deployed, to deter any attempt at the use of force to threaten the political process and to ensure the protection of civilians under imminent threat of physical violence, from any armed group, foreign or Congolese, in particular the ex-

## II. THE SCANDAL

In 2004, stories of the alleged involvement in rape and “survival sex” with women and children began to emerge. The U.N. is investigating one case in which a French logistics employee videotaped himself torturing and abusing naked girls.<sup>26</sup> Other peacekeepers allegedly lured girls as young as ten years old to have sex in exchange for a cup of milk, a few eggs, peanut butter or a dollar.<sup>27</sup> Some reports told of girls raped by militias then abandoned by their families, who, desperate and starving, traded sex for small sums of money or food with the peacekeepers. Girls claimed that they sometimes had sex with U.N. peacekeepers in U.N. cars or at peacekeeper camps.<sup>28</sup> One article described a fourteen year-old girl named Yvette who is called the “one-dollar girl” or the *kidogo usharati*, “little prostitute,” in her community in Bunia because that is what she charges U.N. peacekeepers for sex.<sup>29</sup> A militiaman raped Yvette when she was ten years old; when she sought counseling at a women’s group she was informed that while she had done nothing wrong, no man would want her as a bride because she was no longer a virgin. About having sex with the peacekeepers, Yvette said, “I’m sad about it. But I needed the dollars. I can’t go farm because of the militias. Who will feed me?... Sometimes it happens in U.N. cars, other times at the camp. But at least they paid us. I was worthless anyhow. My honor was lost.”<sup>30</sup> A militiaman also raped Francine, a friend of Yvette, when she went into a field to gather food, and now she, too, engages in sex with peacekeepers. Francine is sixteen years old, and she described an incident where she had negotiated to have sex with one Moroccan peacekeeper but then five other Moroccan peacekeepers raped her. Francine said, “I feel bad about what I did. I don’t want to go through that again.”<sup>31</sup>

## III. THE OFFICE OF INTERNAL OVERSIGHT SERVICES REPORT

Media attention to allegations of sexual abuses by the DRC peacekeepers led the United Nations Division of Peacekeeping Operations (“DPKO”) and MONUC to ask the United Nations Office

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FAR and the Interhamwe . . .”).

26. See Emily Wax, *Congo’s Desperate ‘One-Dollar U.N. Girls,’* WASH. POST, Mar. 21, 2005, at A1.

27. See Lacey, *supra* note 12; Colum Lynch, *U.N. Envoy to Resign in Wake of Sex Scandal,* WASH. POST, Mar. 2, 2005, at A14.

28. See Wax, *supra* note 26.

29. See *id.*

30. *Id.*

31. *Id.*

of Internal Oversight Services to investigate.<sup>32</sup> Between May and September 2004, the OIOS carried out its investigation in Bunia, in the eastern part of the DRC, where 4,500 of the almost 14,000 troops in the DRC were located.<sup>33</sup> In early 2005, the OIOS issued its report. The OIOS investigated seventy-two allegations. While some allegations involved women over eighteen years of age, the majority of the victims were between twelve and eighteen years old; many of the younger girls, aged eleven to fourteen, had sex with peacekeepers as a way to obtain food and small amounts of money.<sup>34</sup> Six of the cases involved under-age girls and were completely corroborated.<sup>35</sup> In two cases, the evidence was “convincing but not fully substantiated,” and in eleven cases, there was evidence of peacekeeper sexual abuse, but it was not corroborated.<sup>36</sup> In none of the nineteen cases did the peacekeepers admit to any wrongdoing.<sup>37</sup>

The OIOS, in determining whether to recommend cases for action, appears to have set a high evidentiary threshold of substantiation and corroboration. This is disturbing due to a number of factors. The majority of the allegations appear to involve minors. There may be underreporting of allegations because MONUC received complaints rather than a third party, and this may not be the best system to encourage reporting of complaints. Further, there is an inequitable power differential between the women and the peacekeepers which could yield to exploitation. Peacekeepers often are repatriated before the conclusion of the investigation, which contributes to a lack of accountability and timeliness in pursuing these complaints.

The report of the OIOS to the Secretary General has several other troubling aspects. First, the report states that while it was the intent of the OIOS to name the troop-contributing countries whose peacekeepers exploited women and girls in Bunia, the DPKO instead simply gave the investigative reports to the relevant countries so that they could take “appropriate action.”<sup>38</sup> This lack of transparency regarding which countries provided the troops that allegedly committed the abuse smacks of political negotiations behind the

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32. See The Secretary-General, *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation by the Office of the 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).

33. *Id.*

34. *Id.* at ¶ 11.

35. *Id.* at ¶ 10.

36. *Id.*

37. *Id.*

38. See *id.* at ¶ 49.

scenes to avoid the negative publicity that naming the countries would surely cause.

Second, the OIOS notes that sexual activity between peacekeepers and local women and girls continued during the investigation despite general knowledge that the investigation was taking place. This was evidenced by freshly used condoms near military posts and guard stations and indicates a lack of concern by peacekeepers about the possible repercussions of the investigation findings. Indeed, the report states that “[w]ithout strong reinforcement of the legal requirements and prompt sanctions for violations, they may well continue this behaviour.”<sup>39</sup>

Third, the OIOS notes that while one troop contingent responded in a timely fashion to OIOS requests for information, two other contingents either did not provide information when requested or actually disrupted the investigation.<sup>40</sup> This interference from senior level officers with an ongoing U.N. investigation is particularly troubling because it demonstrates how little deterrent effect an ongoing investigation has for preventing further crimes.

The OIOS makes a number of recommendations that are applicable to other peacekeeping missions in addition to MONUC. The OIOS suggested that the DPKO train peacekeepers on possible sanctions for sexual abuse and exploitation and permanently exclude peacekeepers from peacekeeping missions if they are found to have committed sexual exploitation and abuse.<sup>41</sup> The OIOS recommended that DPKO designate a third party such as local officials or non-governmental organizations to receive reports of abuse and report incidents of abuse to senior DPKO officials.<sup>42</sup> The OIOS further advised that DPKO and MONUC create a prevention program staffed by experts on the sexual abuse of children.<sup>43</sup> It urged the DPKO to instruct troop-contributing nations whose peacekeepers have been implicated to take “appropriate action” and inform the DPKO what steps these nations actually took.<sup>44</sup> Sharing this sort of information might help to put peacekeepers on notice that their actions would have ramifications.

The report also calls for the improvement of current programs to help the vulnerable population develop methods other than engaging

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39. *Id.* at ¶ 44.

40. *See id.* at ¶ 38.

41. *See id.* at ¶ 56.

42. *See id.*

43. *See id.*

44. *See id.* at ¶ 49.

in survival sex to obtain food and other essentials.<sup>45</sup>

#### IV. RAMIFICATIONS OF THE REPORT

As a result of the OIOS report, the U.N. Under-Secretary for Peacekeeping Operations sent a special investigative team to the DRC.<sup>46</sup> The team created a sexual exploitation and abuse focal-point network composed of all U.N. agencies in the DRC.<sup>47</sup> MONUC will ensure that meetings be held regularly to coordinate the provision of training and prevention for MONUC forces and aid to victims.<sup>48</sup> The DPKO has also established an Internet site to help educate staff about what constitutes sexual abuse and exploitation, and it has created a curfew and strict rules regarding non-fraternization with the local people.<sup>49</sup>

At the end of March 2005, the U.N. Security Council issued another resolution regarding the DRC.<sup>50</sup> It extended MONUC's mandate to October 2005, condemned the attack on the U.N. peacekeepers, and encouraged the transitional government to make progress toward holding elections.<sup>51</sup> Reaffirming its concern about the sexual abuse and exploitation that U.N. personnel committed, it asked the Secretary General to ensure compliance with his zero tolerance policy on sexual abuse, and investigate and penalize those found to be responsible.<sup>52</sup> The Security Council also urged troop-contributing nations to review the Secretary General's March 2005 report on sexual abuse and exploitation and hold pre-deployment training sessions for their troops on the issue, as well as discipline any troops who commit abuse.<sup>53</sup>

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45. *See id.* at ¶ 50.

46. The Secretary-General, *Seventeenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, ¶ 64, U.N. Doc. S/2005/167 (March 15, 2005).

47. *See id.* at ¶ 65.

48. *See id.*

49. *See id.* at ¶¶ 67-68.

50. *See* S.C. Res. 1592, U.N. Doc. S/RES/1592 (Mar. 30, 2005).

51. *See id.* at ¶¶ 1, 8.

52. *See id.* at ¶ 11.

53. *See id.* at ¶ 12.

## V. REPORT CALLING FOR ELIMINATION OF SEXUAL EXPLOITATION AND ABUSE

In March 2005, the U.N. issued a comprehensive report recommending ways to prevent peacekeeper sexual exploitation and abuse.<sup>54</sup> In the introduction to the report, U.N. Secretary General Kofi Annan specifically mentions the peacekeeper abuse in the DRC and how the peacekeeper abuse there highlights the need for preventative measures to deter future misconduct there and elsewhere.<sup>55</sup> The report emphasized that peacekeeper sexual abuse and exploitation impugns the reputation of a mission and makes peacekeepers appear hypocritical when trying to advise foreign governments on international human rights norms.<sup>56</sup>

The report avers that while there are efforts underway to address peacekeeper abuses, they have primarily been ad hoc responses, and what is needed is fundamental systemic change in the “prevention, identification, and response” to the problem.<sup>57</sup> It also cites the difficulty of applying different legal standards to sectors of the peacekeeping forces because of their varying status.<sup>58</sup> Peacekeeping forces can consist of U.N. staff, volunteers, independent contractors, and members of national armies. While U.N. staff and volunteers are governed by the Convention on Privileges and Immunities of the United Nations, local law applies to individual contractors. Members of national militaries engaged in U.N. peacekeeping missions generally are governed by Status of Forces agreements.<sup>59</sup> Under Status of Forces agreements, the host country typically defers the exercise of disciplinary and criminal prosecution to the peacekeeper home country.<sup>60</sup>

The report recommends that the Secretary General establish a permanent investigative body independent of the DPKO and peacekeeping missions.<sup>61</sup> This entity should use modern standards of evidence-gathering and ensure that investigations comport with the standards of troop-contributing nations.<sup>62</sup> Currently, some investigations collect evidence only to find it unusable because it does not comply with the requisite evidence collection techniques. To

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54. See G.A. Res. 59/710, U.N. Doc. A/RES/59/710 (Mar. 24, 2005).

55. See *id.*

56. See *id.* at ¶ 10.

57. See *id.* at ¶ 7.

58. See *id.* at ¶¶ 14-22.

59. See *id.*

60. See *id.* at ¶ 19.

61. See *id.* at ¶ 32.

62. See *id.*

facilitate access to witnesses and evidence, the report suggests the use of on-site courts martial for serious criminal violations.<sup>63</sup>

The report makes a number of suggestions to improve overall management and organizational responses to allegations of abuse. Senior managers should regularly set the tone that abuse will not be tolerated and train peacekeepers on standards of conduct and the U.N. policies preventing sexual exploitation and abuse. Peacekeeper codes of conduct should be available in all of the languages that the peacekeepers speak; currently they are only published in the official languages of the U.N., which does not encompass all of the languages of the troop-contributing nations.<sup>64</sup> Peacekeeping missions should reach out to local communities to explain the DPKO's policies against exploitation and to allow local people to make complaints in confidence. The report encourages peacekeeping missions to develop data systems to monitor allegations of abuse and report the outcome of investigations. It calls for earmarked positions to implement the new measures, both in the field and at U.N. headquarters. Echoing the requirements of Security Council Resolution 1325, it emphasizes the need for increased numbers of women in peacekeeping operations, especially because victims are more likely to feel comfortable reporting abuse to women rather than to men.<sup>65</sup>

Presumably as a way to provide peacekeepers with leisure time activities other than sex, the report describes the lack of recreational facilities for peacekeepers and encourages peacekeeping missions to build athletic facilities, Internet cafes, and subsidize telephone lines so that peacekeepers may talk with their families and friends.<sup>66</sup> In a reference to what occurred in the OIOS investigation in the DRC when at least two commanders failed to cooperate with the investigation, the report calls for the institution of financial penalties against commanders who fail to cooperate.<sup>67</sup>

The report makes a number of suggestions to improve the DPKO response to victims. For example, it calls for peacekeeping operations to provide emergency medical assistance to victims who accuse U.N. peacekeepers of abuse, to refer victims to other humanitarian organizations, including legal assistance entities, and to provide victims with information on the status of their complaint against

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63. *See id.* at ¶ 35.

64. *See id.* at ¶ 39.

65. *See id.* at ¶ 43.

66. *See id.* at ¶ 51.

67. *See id.* at ¶ 61.

peacekeepers upon the conclusion of an investigation.<sup>68</sup> Recalling the International Criminal Court's Victim's Trust Fund, it encourages the U.N. to establish a voluntary trust fund for victims.<sup>69</sup> Financial penalties assessed against peacekeepers found to have perpetrated abuse could help to provide resources to this fund.

Addressing the problem of babies conceived as a result of peacekeeper liaisons with local women and girls, the report recommends conducting DNA testing to try to identify the fathers in order to ensure that the children are provided some financial assistance when the father returns to his home nation.<sup>70</sup> While this recommendation is well-intentioned, the logistics of conducting DNA testing in a post-conflict situation when the mother is living in a refugee camp and the peacekeeper-father is leaving to return to his home nation boggles the mind.

The report urges an international group of experts to be convened to study the problem of the immunity of peacekeepers from criminal prosecution and to examine whether an international convention is needed to ensure that those perpetrating crimes in host nations are held accountable.<sup>71</sup>

#### VI. THE IMPLICATIONS OF HUMAN RIGHTS STANDARDS RESULTING FROM THE PEACEKEEPER ABUSE

The U.N. has recognized the applicability of a number of international human rights norms to its work in peacekeeping operations. While the U.N. is not a state party to international human rights conventions, at least one commentator has argued that it remains subject to customary international law of human rights in carrying out its work.<sup>72</sup> The U.N. has explicitly stated that sexual exploitation and abuse violate such universally recognized legal norms.<sup>73</sup>

The U.N. Charter, the Universal Declaration of Human Rights ("UDHR"), the International Covenant on Civil and Political Rights

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68. See *id.* at ¶ 54.

69. See *id.* at ¶ 56.

70. See *id.* at ¶ 72.

71. See *id.* at ¶¶ 91-95.

72. See Jennifer Murray, *Who Will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina*, 34 COLUM. HUM. RTS. L. REV. 475, 518-19 (2003) (commenting that the "[The International Court of Justice] found the United Nations to be 'a subject of international law and capable of possessing international rights and duties'").

73. 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).

(“ICCPR”), the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), and the Convention on the Rights of the Child (“CRC”) include a number of provisions that help to protect the rights of both women and children. For example, the UN Charter,<sup>74</sup> the UDHR,<sup>75</sup> the ICCPR,<sup>76</sup> and CEDAW<sup>77</sup> guarantee equality on the basis of sex. Article 1(3) of the United Nations Charter states that one of the purposes of the U.N. lies in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>78</sup> The UDHR,<sup>79</sup> the ICCPR,<sup>80</sup> CEDAW,<sup>81</sup> and the CRC<sup>82</sup> provide for the right to life and security of person. When peacekeepers sexually exploit women and children, they are contravening this right, particularly with respect to security.

The UDHR,<sup>83</sup> the ICCPR,<sup>84</sup> CEDAW,<sup>85</sup> and the CRC<sup>86</sup> provide the

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74. U.N. Charter art. 1, ¶ 3.

75. Universal Declaration of Human Rights, G.A. Res. 217A, art. 2, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR] (proclaiming “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status”).

76. See International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 2, 999 U.N.T.S. 221 (entered into force Sept. 3, 1976) [hereinafter ICCPR].

77. See Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, art. 2, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

78. See UN.org, Chapter One: Principles and Purposes, <http://www.un.org/aboutun/charter/chapter1.htm> (last visited April 26, 2006).

79. See UDHR, *supra* note 75, art. 3 (providing that “[e]veryone has the right to life, liberty, and security of person”).

80. See ICCPR, *supra* note 76, art. 6.

81. See CEDAW, *supra* note 77, General Recommendation 19 (11th session 1992):

Gender based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include: (a) The right to life; (b) the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or armed conflict; (d) the right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favorable conditions of work.

82. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, art. 6, 1577 U.N.T.S. 44 (the DRC signed March 20, 1990 and ratified Sept. 27, 1990) [hereinafter CRC].

83. See UDHR, *supra* note 75, art. 5.

84. See ICCPR, *supra* note 76, art. 7.

85. See CEDAW, *supra* note 77, General Recommendation 19 (11th session

right to be free from torture, cruel, inhuman, or degrading treatment or punishment. When peacekeepers sexually exploit women and girls, they violate this right particularly because of the great power differential between the peacekeepers and the women and children.

A fundamental premise in the UDHR,<sup>87</sup> the ICCPR,<sup>88</sup> and CEDAW<sup>89</sup> is that of equal protection before the law for both women and men. In General Recommendation Number 19, the U.N. CEDAW Committee noted that discrimination includes gender-based violence that either is directed at women because they are women or affects them disproportionately. Such violence includes acts that inflict mental and/or sexual harm or suffering, or threaten to commit such injury.<sup>90</sup>

#### VII. PROBLEMS OF ACCOUNTABILITY AND RECOMMENDATIONS FOR REFORM

The international community might attempt to hold peacekeepers criminally liable for sexual exploitation and abuse of women and children in a number of ways. These include the International Criminal Court, prosecutions in national court systems and in the DRC, and the U.N. itself. Barriers exist to almost all of these, however, including the temporal jurisdiction of the ICC, Article 98(2) agreements, the immunities of U.N. personnel specified in the Model Status of Forces Agreement, Article 16 of the Rome Statute, and the inability or unwillingness of national court systems to prosecute peacekeepers.

##### A. *The International Criminal Court (ICC)*

Attempting to hold peacekeepers accountable for their crimes in the ICC is unlikely to be successful for a number of reasons. First, the jurisdiction of the court is limited under Article 5 to crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. The abuses that the peacekeepers perpetrated do not appear to rise to the level of either genocide, or crimes against

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1992).

86. See CRC, *supra* note 82, art. 19 (“State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child . . .”).

87. See UDHR, *supra* note 75, art. 7.

88. See ICCPR, *supra* note 76, art. 3.

89. See CEDAW, *supra* note 77, art. 1.

90. See CEDAW, *supra* note 77, General Recommendation 19 (11th session 1992).

humanity, as the Rome Statute, the authorizing treaty of the ICC, defines them.<sup>91</sup> The crimes might arguably fall within the definition of “war crimes” as defined in the Rome statute,<sup>92</sup> but the ICC prosecutor has indicated that he will only prosecute the most egregious crimes, and while the peacekeepers’ acts are heinous, they arguably do not rise to the level of the crimes upon which the Prosecutor should focus. Even were the court to prosecute such crimes, as noted above, the court only has temporal jurisdiction for crimes that occurred after July 1, 2002, which may exclude conduct that occurred before then.

### *B. Article 98(2) Agreements*

In addition to seeking immunity for U.S. military members under Article 16 of the Rome Statute, the U.S. has also been entering into bilateral treaties with other nations under Article 98(2) of the Rome Statute. These “article 98 agreements” are aimed at preventing U.S. nationals from being investigated and prosecuted by the ICC, without any duty on the part of the U.S. to investigate and prosecute its nationals.<sup>93</sup> The U.S. has entered into ninety-nine of these agreements as of April 2005.<sup>94</sup>

In his article on the original intent of Article 98(2), David Scheffer, who served as the head of the U.S. delegation negotiating the Rome Statute during the Clinton Administration, opined that the article was never meant to allow impunity for those accused of genocide, war crimes, or crimes against humanity. He argues that when the U.S. negotiated the Rome Statute, the U.S. sought to have U.S. service personnel subject to Status of Forces agreements and Status of Mission agreements for criminal prosecution, and to no other treaty such as the Rome Statute. Article 98(2) was not intended to cover an individual’s private acts.<sup>95</sup> Under this interpretation, peacekeepers’ acts committed outside of their official duties, such as sexual abuse

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91. Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, art. 6-8, 37 I.L.M. 999 (defining “genocide” in article 6; “crimes against humanity” in article 7; and “war crimes” in article 8).

92. *See id.* at art. 8 (describing war crimes as including: committing outrages upon personal dignity, in particular humiliating and degrading treatment; committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Convention).

93. *See* David A. Tallman, Note, *Catch 98(2): Article 98 Agreements and the Dilemma of Treaty Conflict*, 92 GEO. L.J. 1033, 1040 (2004) (noting that the U.S. has repeatedly attempted to avoid ICC jurisdiction over its peacekeepers).

94. *See* David Scheffer, *Article 98(2) of the Rome Statute: America’s Original Intent*, 3(2) J. INT’L CRIM. JUST. 333, 335 (2005).

95. *See id.* at 338-40 (arguing that the U.S. only sought to increase the protection of U.S. nationals in foreign jurisdictions).

and exploitation, should not be covered by Article 98(2), but rather, prosecution would occur through a Status of Forces agreements or Status of Mission agreements.

### *C. The American Service Members Protection Act*

In addition to pursuing bilateral agreements with other nations under Article 98(2) of the Rome Statute, the Bush Administration has been entering into agreements not to surrender our military personnel to the ICC for prosecution. The Administration has made acceptance of these agreements a precondition for other nations to receive foreign and military assistance under the American Service Members Protection Act.<sup>96</sup> Such agreements seem to be a misguided way to prevent U.S. peacekeepers from being prosecuted in international tribunals rather than to keep them from perpetrating crimes in the first place, where, arguably, a greater emphasis should be placed.

### *D. Article 16 of the Rome Statute*

Further, U.S. peacekeepers have been exempt from the jurisdiction of the ICC through a number of mechanisms, including Article 16 of the Rome Statute.<sup>97</sup> In 2002, the United States obtained Security Council Resolution 1422,<sup>98</sup> giving immunity for one year to peacekeepers from nations that are not state parties to the Rome Statute. The United States sought and received an extension of this immunity for another year in Security Council Resolution 1487.<sup>99</sup> When the U.S. and the U.K. sought to have a third extension of the immunity in 2004, however, the Security Council did not authorize it, probably because of the Abu Ghraib prison abuse scandal. Other nations on the Security Council did not want to give the U.S. military immunity from prosecution for their actions torturing prisoners in Iraq and Guantanamo Bay, Cuba.<sup>100</sup> Some commentators argue that the drafters of the Rome statute never meant for Article 16 to be used to immunize peacekeepers from prosecution.<sup>101</sup>

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96. *See id.* at 350.

97. The U.S. convinced the U.N. Security Council to agree in 2003 to exempt U.S. service members from the Jurisdiction of the ICC through Article 16 of the Rome Statute; *see also* Frederic L. Kirgis, *U.S. Drops Plan to Exempt G.I.s from U.N. Court*, American Society for International Law, ASIL Insight, July 2004, <http://www.asil.org/insights/insigh139.htm>.

98. S.C. Res. 1422, U.N. Doc. S/RES/1422 (July 12, 2002).

99. S.C. Res. 1487, U.N. Doc. S/RES/1487 (June 12, 2003).

100. GEERT-JAN ALEXANDER KNOOPS, *THE PROSECUTION AND DEFENSE OF PEACEKEEPERS UNDER INTERNATIONAL CRIMINAL LAW* 5-7 (2004).

101. *Id.*

### XIII. RECOMMENDATIONS FOR REFORM

The United Nations and troop-contributing nations should take a multi-prong approach to prevent further abuse from occurring and hold those accountable for perpetuating abuse. The U.N. must periodically train and re-train peacekeepers on the codes of conduct, the prohibition against sexual exploitation and abuse, and other human rights laws. It should take seriously the recommendation that it establish an independent body staffed by experts on sexual abuse of women and children to whom victims can make complaints. To prevent peacekeepers alleged to have committed abuse from leaving a host nation while an investigation is pending, the U.N. should create a monitoring system that would permit it to check to ensure that there are no outstanding allegations of abuse before peacekeepers can be repatriated. Status of Forces agreements should contain assurances that troop-contributing nations will investigate and prosecute any allegations of peacekeeper abuse, and, should countries fail to do so, those countries should be excluded from contributing peacekeeping forces in the future. This latter suggestion could have the negative impact of reducing the total number of peacekeepers available worldwide for assignment, but it may help to improve the overall reputation of the U.N.

While the U.N. states that it has a “zero tolerance” policy toward sexual abuse and its code of conduct for peacekeepers asserts that reprisals for abuse may constitute termination of employment, to date there have been no reports of such loss of employment for peacekeepers. If the U.N. takes this issue seriously, it should follow its rhetoric and terminate peacekeepers found to have committed sexual crimes.

The U.N. must also address the issue of sexism within its own ranks and make a concerted effort to hire and place well-qualified women in all ranks, but particularly at senior levels, in peacekeeping operations and throughout the institution.

The U.N. should consider the underlying causes for women and girls seeking to engage in survival sex with peacekeepers in post-conflict nations. It may want to consider allowing a portion of peacekeeping mission funds to be spent on making tangible differences in the quality of life of the local people.<sup>102</sup> Where there are large numbers of peacekeepers stationed, there should also be education and training programs, food distribution, and training

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102. The so-called “Brahimi” report suggested this. See U.N. General Assembly, *Report on the Panel of United Nations Peace Operations*, Aug. 17, 2000, U.N. Doc. A/55/305 (reviewing comprehensively the whole question of peacekeeping operations in all their aspects).

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about the causes of HIV/AIDS, so that when peacekeepers leave a nation, they have helped to improve the conditions rather than further traumatizing an already damaged populace.

SUSAN A. NOTAR