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## U.N. PEACEKEEPERS AND SEXUAL ABUSE AND EXPLOITATION: AN END TO IMPUNITY

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### I. INTRODUCTION

It is indeed ironic that the United Nations (U.N.), which has been instrumental in setting norms in the area of gender equality,<sup>1</sup> now stands

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accused of egregious acts of sexual abuse and exploitation committed by U.N. peacekeepers and civilian personnel.<sup>2</sup> After a decade of virtual inaction, the United Nations has taken some preliminary measures to address the problem following the disclosure of such abuse. However, far-reaching changes in peacekeeping operations and contractual obligations of the Troop Contributing Countries (TCCs) must be implemented in order to deal with this serious issue and to change the culture of dismissiveness pervading peacekeeping operations. Numerous proposals for reform have been urged by NGOs (non-government organizations) and Member States and are included in a report by Prince Zeid Ra'ad Zeid Al-Hussein (Prince Zeid), *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations* (Zeid Report),<sup>3</sup> that was prepared at the request of U.N. Secretary-General Kofi Annan. The Zeid Report was endorsed by the Security Council and the General Assembly,<sup>4</sup> and it has both formed the basis for action by those bodies and been a catalyst for some of the reforms already implemented. This Article analyzes and assesses the proposed reforms and implementation and discusses the additional action that must be taken by Member States and the U.N. in order to eliminate sexual abuse and exploitation in peacekeeping missions.

## II. MEDIA DISCLOSURE OF SEXUAL ABUSE AND EXPLOITATION

Although reports of sexual abuse or misconduct by U.N. peacekeepers or civilian personnel first surfaced more than a decade ago,<sup>5</sup> the international media paid scant attention to such allegations. However, the

1. The most significant and widely ratified international agreement making reference to the rights of women is the United Nations Charter. The United Nations has also promulgated several treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, which guarantee gender equality. In addition, it has promulgated the comprehensive Convention on the Elimination of All Forms of Discrimination Against Women. See, e.g., Malvina Halberstam & Elizabeth Defeis, *Women's Legal Rights: International Covenants an Alternative to ERA?* (Transnational Publications) (1988).

2. See *U.N. Says Scores Of Peacekeepers Ousted for Abuse*, WASH. POST, Dec. 1, 2006, at A23; Sarah Lyall, *Aid Workers Are Said to Abuse Girls*, N.Y. TIMES, May 9, 2006, at A8.

3. U.N. GEN. ASSEMBLY, A COMPREHENSIVE STRATEGY TO ELIMINATE FUTURE SEXUAL EXPLOITATION AND ABUSE IN UNITED NATIONS PEACEKEEPING OPERATIONS, U.N. Doc. A/59/710 (Mar. 24, 2005) (prepared by Prince Zeid Ra'ad Zeid Al-Hussein) [hereinafter ZEID REPORT].

4. Press Release, Security Council, Security Council Condemns 'in the Strongest Terms' All Acts of Sexual Abuse, Exploitation by UN Peacekeeping Personnel, U.N. Doc. SC/8400 (May 31, 2005).

5. See Olivia Ward, *Scandal Blackens U.N. 'Blue Helmets'*, TORONTO STAR, Mar. 26, 2005, at A10. "Allegations of misconduct have . . . surfaced in Sierra Leone, Guinea, Liberia, Kosovo, Bosnia, Ivory Coast, Burundi . . . , Haiti, and Congo." *Id.*

shocking acts of abuse of the U.N. peacekeepers in Sierra Leone, Guinea, and Liberia were widely reported in the press.<sup>6</sup> This negative publicity, coupled with intensive press coverage of other areas, such as the oil-for-food scandal, has caused the U.N. and many of its Member States to urge reform and increased accountability of U.N. military and civilian personnel implicated in violations of human rights.<sup>7</sup>

Sexual abuse and exploitation was first documented “in Bosnia, Herzegovina and Kosovo in the early 1990s, [and] then later in Mozambique, Cambodia, East Timor and Liberia.”<sup>8</sup> Abuses included sexual exploitation of children, pornography, and sexual assaults, “but it was not until the widespread allegations of abuse emerged in the DRC [Democratic Republic of Congo] in mid-2004 that numerous high-level [U.N.] officials responded to the charges.”<sup>9</sup> Secretary-General Annan acknowledged that acts of gross misconduct had clearly taken place stating:

This is a shameful thing for the United Nations to have to say, and I am absolutely outraged by it.

.....

6. The BBC website, for example, carried five articles on the issue in the month following the leaking of a report by the UNHCR in conjunction with the British-based charity Save the Children. *Child Refugee Sex Scandal*, BBC NEWS, Feb. 26, 2002, <http://news.bbc.co.uk/2/hi/Africa/1842512.stm>; *Aid-for-Sex Children Speak Out*, BBC NEWS, Feb. 27, 2002, <http://news.bbc.co.uk/2/hi/Africa/1843930.stm>; *African Refugees Condemn Sex Abuses*, BBC NEWS, Feb. 28, 2002, <http://news.bbc.co.uk/2/hi/Africa/1847483.stm>; *Sex-for-Aid Under U.N. Spotlight*, BBC NEWS, Mar. 8, 2002, <http://news.bbc.co.uk/2/hi/Africa/1861763.stm>; *Britons in Sex-for-Aid Scandal*, BBC NEWS, Mar. 18, 2002, <http://news.bbc.co.uk/2/hi/Africa/1878063.stm>. According to the U.N. Peacekeeping Department’s Conduct and Discipline Team, the U.N. has repatriated thirty-seven peacekeepers for sexual exploitation and abuse: twelve from Nepal, seven from Uruguay, four from Nigeria, four from Senegal, two from Benin, two from Ethiopia, two from Togo, and one each from France, Ghana, India, Niger and South Africa. *U.N. Says Scores of Peacekeepers Ousted for Abuse*, *supra* note 2.

7. Column Lynch, *U.N. Panel Says 2,400 Firms Paid Bribes to Iraq; Oil-for-Food Program Report Alleges \$1.8 Billion in Payments*, WASH. POST, Oct. 28, 2005, at A16.

8. GLOBAL POLICY FORUM, U.N. REFORMS AIM TO END SEXUAL ABUSE BY PEACEKEEPERS (2005), <http://www.globalpolicy.org/security/peacepg/reform/2005/0510conduct.htm>. In November 2001, a report prepared by consultants retained by the Office of the U.N. High Commissioner for Refugees (UNHCR) and Save the Children UK presented allegations of widespread sexual exploitation of female refugees in the UNHCR camps by international and national aid workers in Guinea, Liberia, and Sierra Leone. In response to those allegations, the UNHCR asked the Office of Internal Oversight Services (OIOS) to conduct an investigation into the allegations. Beginning in February 2002, an OIOS Investigation Team undertook to 1) attempt to verify the allegations presented in the consultants’ report, which were based on third person accounts, and 2) to determine whether sufficient evidence exists to prove cases of sexual exploitation by aid workers and peacekeepers in either criminal or administrative proceedings.

9. *See id.*

...I have long made it clear that my attitude to sexual exploitation and abuse is one of zero tolerance, without exception, and I am determined to implement this policy in the most transparent manner.<sup>10</sup>

The Secretary-General acknowledged that the procedures in place “were manifestly inadequate and that a fundamental change in approach was needed.”<sup>11</sup> In 2004, Prince Zeid<sup>12</sup> was appointed by Secretary-General Annan to investigate and report on possible abuse.<sup>13</sup> In March 2005, Prince Zeid issued the Zeid Report, detailing pervasive abuse and exploitation of women and girls,<sup>14</sup> most of which involved trading sex for money,<sup>15</sup> food, or jobs.<sup>16</sup> Just as disturbing were acts of rape disguised as prostitution, where victims were given gifts after being assaulted in order to give the impression that the sex act was one of prostitution rather than rape.<sup>17</sup> Victims of abuse were often abandoned with children to care for, so-called “peacekeeper babies,” without any family to care for them.<sup>18</sup>

However, more than a year after the announcement of the widely heralded zero-tolerance policy, Prince Zeid, in a confidential report obtained by the *London Times*, said, “[t]he situation appears to be one of ‘zero-compliance with zero tolerance’ throughout the mission.”<sup>19</sup>

10. Press Release, Secretary-General Kofi Annan, Secretary-General ‘Absolutely Outraged’ by Gross Misconduct by Peacekeeping Personnel in Democratic Republic of Congo, U.N. Doc. SG/SM/9605 (Nov. 19, 2004), available at <http://www.un.org/News/Press/docs/2004/sgsm9605.doc.htm>.

11. Letter from the Secretary-General to the President of the General Assembly, United Nations, U.N. Doc. A/59/710 (Mar. 24, 2005). The Secretary-General’s letter annexed the Zeid Report. ZEID REPORT, *supra* note 3.

12. Prince Zeid Ra’ad Zeid Al-Hussein is the Permanent Representative of Jordan to the United Nations and a former peacekeeper. Letter from the Secretary-General to the President of the General Assembly, *supra* note 11.

13. Secretary-General Office of the Spokesperson, Secretary-General’s Statement on Prince Zeid’s Report “A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in UN Peacekeeping Operations,” (Mar. 24, 2005), available at <http://www.un.org/apps/sg/sgstats.asp?nid=1362> (last visited Feb. 9, 2008).

14. ZEID REPORT, *supra* note 3.

15. *Id.* ¶ 6. According to the Zeid Report, remuneration averaged \$1–\$3 for each encounter. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Jonathan Clayton & James Bone, *Sex Scandal in Congo Threatens to Engulf UN’s Peacekeepers*, THE TIMES (London), Dec. 23, 2004, at 25; See also SARAH MARTIN, REFUGEES INT’L, MUST BOYS BE BOYS? ENDING SEXUAL EXPLOITATION & ABUSE IN UN PEACEKEEPING MISSIONS (2005), [http://www.refugeesinternational.org/files/6976\\_file\\_FINAL\\_MustBoys.pdf](http://www.refugeesinternational.org/files/6976_file_FINAL_MustBoys.pdf). Refugees International (RI), an NGO advocacy group, issued a report that is critical of the virtual inaction of the U.N. and the culture that continues to exist in peacekeeping missions. The report stated that:

[T]he process of mainstreaming gender into peacekeeping missions, or incorporating gender perspectives into all areas of work, has yet to truly take hold within the UN missions that RI

In October 2005, the *New York Times* marked the U.N.'s sixtieth anniversary with a scathing editorial on sexual abuse by U.N. peacekeepers.<sup>20</sup> It said:

Nothing discredits the United Nations more than the continuing sexual abuse of women and girls by soldiers belonging to its international peacekeeping missions. And yet almost a year after shocking disclosures about such crimes in Congo, far too little has been done to end the culture of impunity, exploitation and sexual chauvinism that permits them to go on.

The whole purpose of these missions is to help countries ravaged by civil or international conflict restore stability, guarantee public security and instill the rule of law. When United Nations peacekeepers rape the people they were sent to protect and coerce women and girls to trade sex for food, as they were found to have done in Congo last winter, they defeat the purpose of their mission and exploit some of the world's most vulnerable people.<sup>21</sup>

During his last month in office, December 2006, Secretary-General Annan acknowledged, "[m]y message of zero-tolerance has still not got through to all those who need to hear it—from managers and commanders on the ground, to all our other personnel."<sup>22</sup>

In January 2007, widespread allegations of sexual exploitation by U.N. peacekeeping forces in southern Sudan were reported by the media. Allegations included the systematic rape and abuse of children as young as twelve.<sup>23</sup> According to the report, the first allegations emerged shortly

visited . . . . The policies and guidelines set by [the] UN Department of Peacekeeping Operations (DPKO) about sexual exploitation and abuse in missions are not always followed in the field.

*Id.* at ii.

20. Editorial, *The Worse U.N. Scandal*, N.Y. TIMES, Oct. 24, 2005, at A20.

21. *Id.*

22. Press Release, Secretary-General Kofi-Annan, Sexual Exploitation 'Utterly Immoral', Completely at Odds with United Nations Mission, says Secretary-General to New York Conference, U.N. Doc. SG/SM/10776 (Dec. 4, 2006), available at <http://www.un.org/News/Press/docs/2006/sgsm10776.doc.htm>. Annan acknowledged:

. . . Allegations of exploitation and abuse are being handled in a more systematic and professional manner. Staff who commit such acts are fired. And uniformed peacekeeping personnel are being sent home and barred from future peacekeeping service, and also in the expectation that their own Governments will deal with them.

UNITED NATIONS PEACEKEEPING OPERATIONS YEAR IN REVIEW 2006: NEW CHALLENGES, NEW HORIZONS 21 (2007), available at [http://www.un.org/Depts/dpko/dpkp/pub/year\\_review06/YIR2006.pdf](http://www.un.org/Depts/dpko/dpkp/pub/year_review06/YIR2006.pdf) [hereinafter U.N. YEAR REVIEW].

23. Kate Holt & Sarah Hughes, *U.N. Staff Accused of Raping Children in Sudan*, THE DAILY

after the arrival of U.N. forces and were the subject of a 2005 internal UNICEF report detailing the problem.<sup>24</sup> Responding to these allegations the U.N. Assistant Secretary-General for Peacekeeping acknowledged, “[t]here could be truth [in the allegations]. . . . We need to ascertain the facts and follow it through to appropriate resolution and take action if necessary. . . . We won’t be complacent and there will be no impunity to the full extent of the U.N.’s authority.”<sup>25</sup> However, a U.N. official on the ground in Sudan insisted that the peacekeeping mission was following correct codes of conduct, stating, “[w]e are applying a standard of morality that is very, very high but we cannot expect that soldiers when they go abroad are going to behave themselves as we think they should.”<sup>26</sup>

In response to these new allegations, newly appointed Secretary-General Ban Ki-moon reaffirmed the U.N.’s zero-tolerance policy and stated: “The U.N. standard on the issue is clear—zero tolerance, meaning zero complacency and zero impunity. . . . It is the U.N.’s policy to treat credible allegations of sexual exploitation and abuse as serious offences to be investigated by the Office of Internal Oversight Services (OIOS).”<sup>27</sup> U.N. Watch, a Geneva based NGO, has requested that the Secretary-General and the High Commissioner for Human Rights establish an international, independent inquiry into allegations reported in Sudan.<sup>28</sup>

### III. CONTRIBUTING FACTORS TO SEXUAL ABUSE AND EXPLOITATION

Peacekeeping operations have been one of the most successful initiatives launched by the United Nations; in 1988 the Nobel Peace Prize was awarded to U.N. peacekeeping forces.<sup>29</sup> Peacekeepers serve under

TELEGRAPH (London), Apr. 1, 2007.

24. *Report: U.N. Staffers Face Allegations of Rape, Sexual Abuse in Southern Sudan*, INT’L HERALD TRIB., Jan. 2, 2007.

25. *Id.* The *Daily Telegraph* of London published a report concerning the situation in Sudan. Holt & Hughes, *supra* note 23. The paper interviewed more than 20 victims in the city of Juba, and reported that hundreds more may have been abused since the UNMIS arrived in the region two years ago. *See id.*

26. Marian Houk, Commentary, *Sexual Abuse of Children by U.N. Peacekeepers*, MIDDLE E. TIMES, Jan. 4, 2007.

27. Secretary-General Office of the Spokesperson, *Statement Attributable to the Spokesperson for the Secretary-General on Allegations of Sexual Exploitation and Abuse by U.N. Personnel in Sudan* (Jan. 3, 2007), available at <http://www.un.org/apps/sgsgstats.asp?nid=2388>.

28. Letter from Hillel C. Neuer, Executive Director of U.N. Watch, to Ban Ki-Moon, U.N. Secretary-General, and Louise Arbour, the High Commissioner for Human Rights (Jan. 3, 2007), available at <http://unwatch.org/site/c.boIKKISNqEmG/b.1289203/apps/s/content.asp?ct=3394791>.

29. Press Release, The Norwegian Nobel Comm., The Nobel Peace Prize 1988 (Sept. 30, 1988), available at <http://nobelprize.org/peace/laureates/1988/press.html>. In fact, U.N. peacekeepers, “[s]ince 1945 have undertaken over sixty missions, negotiated 172 peaceful settlements . . . and enabled

difficult and often perilous conditions, and many have lost their lives.<sup>30</sup> Nevertheless, the actions of some have cast a shadow over peacekeeping operations and indeed over the United Nations itself. Why does sexual exploitation and abuse in U.N. peacekeeping operations persist? Why, despite the harrowing revelations and specific recommendations for reform contained in many reports, have the U.N. and its Member States not taken effective action to address the situation?

Peacekeeping forces are generally deployed to places where the social fabric has been torn apart by civil strife, where the rule of law is absent, where family structures have disintegrated, and where the local population endures severe economic and psychological hardship.<sup>31</sup> Peacekeepers are viewed by the beneficiary population as wealthier than themselves and, as a result, peacekeepers can exercise enormous power over the local population. Under these conditions, power can be, and sometimes is, abused.

It must also be recognized that the bulk of personnel in peacekeeping missions are men. As of December 2006, of the 8,482 U.N. police officers, only 454 were women, and of the 71,673 military personnel, only 1,034 were women.<sup>32</sup> A “hyper-masculine culture” exists that seems to encourage sexual exploitation and abuse.<sup>33</sup> Such behavior has been dismissed in the past with a “boys will be boys” attitude, even by one U.N. official.<sup>34</sup> Despite the announcement of the zero tolerance policy and increased education and training, the Under-Secretary of Peacekeeping

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citizens in more than forty-five countries to participate in free and fair elections.” *United Nations Peacekeeping Fact Sheet*, DPI/2429/Rev.1, May 2007. Further, an Oxford University survey found that this type of international military intervention is “the most cost-effective means of reducing the risk of conflict.” *Id.*

30. *Id.* In 2006, over 100 peacekeepers lost their lives. Secretary-General’s Message on International Day for United Nations Peacekeepers (May 29, 2007), available at <http://www.un.org/Depts/dpko/peacekeepersday/2007/sgmessage.shtml>. In response to their sacrifice, the U.N. created, per ST/SGB/200/15, the Dag Hammarskjöld Medal. Most recently, six peacekeepers were killed in Lebanon. Nada Bakri, *6 U.N. Peacekeepers Killed in Lebanon*, N.Y. TIMES, June 25, 2007, available at <http://www.nytimes.com/2007/06/25/world/middleeast/25lebanon.html>.

31. Anna Shotton, *A Strategy to Address Sexual Exploitation by U.N. Peacekeeping Personnel*, 39 CORNELL L. REV. 97, 103 (2006).

32. U.N. YEAR REVIEW, *supra* 22, at 32.

33. MARTIN, *supra* note 19, at 5.

34. *Profile: Bureaucrat at Large in the Balkans; Yasushi Akashi, Almost Painfully Diplomatic U.N. Envoy*, THE INDEPENDENT, Apr. 30, 1994, at 14. In the early 1990s, U.N. peacekeepers in Cambodia were accused of sexually abusing girls; the top U.N. official in Cambodia, Yasushi Akashi, responded to the allegations by saying, “boys will be boys.” See generally Barbara Crossette, *When Peacekeepers Turn Into Troublemakers*, N.Y. TIMES, Jan. 7, 1996, § 4, at 6. The United Nations is often criticized for its cavalier attitude towards charges of sexual harassment lodged against United Nations personnel.

Operations acknowledged that not all troop contingents support the zero tolerance policy, particularly as it pertains to prostitution.<sup>35</sup>

This masculine culture allows for a “wall of silence.” In traditionally male-dominated environments such as police departments, militaries, and fraternities, a bond forms that protects the members inside from outside accusations.<sup>36</sup> Instances of abuse and exploitation may go unreported not only to protect the reputation of the peacekeepers, but also because the so-called “whistle-blower” would be stigmatized. Thus, instances of sexual abuse are often ignored.<sup>37</sup>

Further, the disciplinary rules for peacekeeping mission personnel vary according to the status of the individual involved.<sup>38</sup> Each peacekeeping mission is composed of several different components including U.N. staff, experts, U.N. civilian police, U.N. military observers, members of national military contingents, and U.N. volunteers.<sup>39</sup> U.N. personnel enjoy functional immunity from prosecution by the host state which can only be waived by the Secretary-General, while members of military contingents are subject to the exclusive jurisdiction of their respective TCC.<sup>40</sup> Thus, discipline of offenders is uneven, and in many cases non-existent, thereby contributing to a culture of impunity.

35. Press Release, Security Council, Problem of Sexual Abuse by Peacekeepers Now Openly Recognized, Broad Strategy in Place to Address it, Security Council Told Head of Peacekeeping, Adviser to Secretary-General Brief, U.N. Doc. SC/8649 (Feb. 23, 2006).

36. See Eric Schmitt, *Wall of Silence Impedes Inquiry into a Rowdy Navy Convention*, N.Y. TIMES, June 14, 1992, at A1; see also Joan M. Dawson, Opinion, *UN-believable: Sexual Misconduct by U.N. Peacekeepers* (2006), available at [http://209.85.165.104/search?q=cache:DS8SVzkECNAJ:english.ohmynews.com/articleview/article\\_view.asp%3Fat\\_code%3D382507+OhMyNews+UN+peacekeeping+2006&hl=en&ct=clnk&cd=1&gl=us](http://209.85.165.104/search?q=cache:DS8SVzkECNAJ:english.ohmynews.com/articleview/article_view.asp%3Fat_code%3D382507+OhMyNews+UN+peacekeeping+2006&hl=en&ct=clnk&cd=1&gl=us).

37. See Dominic Hipkins, *Bosnia Sex Trade Shames UN*, SCOT. ON SUN., Feb. 9, 2003, available at <http://www.scotsman.com/world/Bosnia-sex-trade-shames-UN.2400797.jp>. Madeleine Rees, the former U.N. High Commissioner for Human Rights in Bosnia, said that officials “don’t want to know about [sexual misconduct].” *Id.* She went on to say, “[t]here is this whole ‘boys will be boys’ attitude about men visiting brothels. There’s a culture inside the U.N. where you can’t criticize it. That goes all the way to the top.” *Id.*

38. Once a mission has been established by the Security Council, the Department of Peacekeeping Operations (DPKO) is responsible for planning, managing, deploying, and supporting the mission. In addition, DPKO has executive decision-making authority over peacekeeping operations, as delegated by the Secretary-General. Each peacekeeping mission is designed, planned, budgeted, and deployed based on the specific requirements of the situation it was created to address. Once a mission has been undertaken, DPKO acts as a liaison between the Security Council, troop and financial contributors, and parties to the conflict. United Nations Department of Peacekeeping Operations Mission Statement, <http://www.un.org/Depts/dpko/dpko/info/page3.htm> (last visited Oct. 22, 2007); see also Anthony J. Miller, *Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations*, 39 CORNELL INT’L L.J. 71 (2006).

39. See ZEID REPORT, *supra* note 3, at ¶ 14.

40. See *infra* Part VLA–B.



## IV. UNITED NATIONS RESPONSE

In October 2000, as allegations of sexual abuse by U.N. peacekeepers became public, U.N. Security Council Resolution 1325 mandated that U.N. peacekeeping mission commanders take into account the differential impact of their actions on women and men.<sup>41</sup> Recognizing the need to incorporate gender-oriented perspectives into peacekeeping operations, the Security Council urged Member States to increase support for gender-sensitive training.<sup>42</sup> It further asked that the Secretary-General take measures to expand the roles of women in field-based operations.<sup>43</sup>

After additional reports of sexual abuse by U.N. peacekeepers surfaced in West Africa, the General Assembly requested that the Secretary-General issue mandatory rules for all U.N. staff to explicitly prohibit sexual exploitation and abuse.<sup>44</sup> The Secretary-General responded in 2003, defining 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.”<sup>45</sup> Sexual abuse is defined as “actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”<sup>46</sup>

Implementation of the regulations and rules vary by mission, leading critics to charge that reform has been implemented piecemeal and far too slowly.<sup>47</sup> Although gender-sensitivity training was initially proposed when the abuse was first documented, its implementation was flawed and more and more instances of exploitation have occurred.<sup>48</sup>

Standards of conduct for military peacekeepers (i.e. military contractors of TCCs) are set out in two publications: *Ten Rules: Code of Personal Conduct for Blue Helmets (Ten Rules)* and *We Are United*

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41. S.C. Res. 1325, ¶ 8, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

42. *Id.* ¶ 7.

43. *Id.* ¶ 16.

44. The Secretary-General, *Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, § 2.2, U.N. Doc. ST/SGB/2003/13 (Oct. 9, 2003) [hereinafter 2003 Bulletin]; Investigation into sexual exploitation of refugees by aid workers in West Africa, G.A. Res. 57/306, U.N. Doc. A/RES/57/306 (May 22, 2003).

45. 2003 Bulletin, *supra* note 44, § 1.

46. *Id.*

47. See Warren Hoge, *Report Finds U.N. Isn't Moving to End Sex Abuse by Peacekeepers*, N.Y. TIMES, Oct. 19, 2005, at A5.

48. See SAVE THE CHILDREN UK, FROM CAMP TO COMMUNITY: LIBERIA STUDY ON EXPLOITATION OF CHILDREN (2006), available at [http://www.savethechildren.it/2003/download/pubblicazioni/Liberia/Liberia\\_sexual\\_exploitation\\_edited\\_LB.pdf](http://www.savethechildren.it/2003/download/pubblicazioni/Liberia/Liberia_sexual_exploitation_edited_LB.pdf) (discussing recent sexual abuse in Liberia).

*Nations Peacekeepers*.<sup>49</sup> Both publications regulate the conduct of peacekeepers in general terms and explicitly prohibit sexual exploitation.<sup>50</sup> Rule Four of *Ten Rules* requires that peacekeepers “. . . not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.”<sup>51</sup> *We Are United Nations Peacekeepers* explicitly states that peacekeepers will never “[c]ommit any act that could result in physical, sexual or psychological harm or suffering to members of the local population, especially women and children.”<sup>52</sup> However, it is the TCCs rather than the U.N. itself that are responsible for the conduct and discipline of their troops.

#### V. PROPOSALS FOR REFORM AND IMPLEMENTATION

While some progress has been made and momentum for reform continues to build, much remains to be done and, indeed, the United Nations, several Member States, numerous NGOs, and the European Parliament indicate that there is continued reason for concern. Nevertheless, both the Department of Peacekeeping Operations (DPKO) and the U.N. should be commended for the progress that they have made to date, particularly with respect to education and training programs and standardizing rules of conduct for U.N. personnel.

Shortly after the issuance of the Zeid Report, the Special Committee on Peacekeeping Operations met to discuss its recommendations.<sup>53</sup> The Committee adopted an ambitious two-year plan of action to effectively address the problem of sexual exploitation and abuse in U.N. peacekeeping operations.<sup>54</sup> The Committee also requested that the

49. U.N. DEPARTMENT OF PEACEKEEPING OPERATIONS, TEN RULES: CODE OF PERSONAL CONDUCT FOR BLUE HELMETS, available at [http://www.un.org/depts/dpko/training/tespublications/books/peacekeepingtraining/pocket\\_cards/ten\\_in.pdf](http://www.un.org/depts/dpko/training/tespublications/books/peacekeepingtraining/pocket_cards/ten_in.pdf) (last visited Apr. 16, 2007) [hereinafter TEN RULES]; U.N. DEPARTMENT OF PEACEKEEPING OPERATIONS TRAINING UNIT, WE ARE UNITED NATIONS PEACEKEEPERS, available at [http://www.un.org/depts/dpko/training/tespublications/books/peacekeepingtraining/pocket\\_cards/un\\_in.pdf](http://www.un.org/depts/dpko/training/tespublications/books/peacekeepingtraining/pocket_cards/un_in.pdf) (last visited June 20, 2007) [hereinafter WE ARE PEACEKEEPERS].

50. Troop Contributing Countries recognize these as binding. ZEID REPORT, *supra* note 3, ¶ 19. Troops, however, may think this policy is not binding. *Id.* ¶ 44.

51. TEN RULES, *supra* note 49.

52. WE ARE UNITED NATIONS PEACEKEEPERS, *supra* note 49.

53. Press Release, Special Committee on Peacekeeping Operations, Special Committee on Peacekeeping Operations Begins Review of Report on Sexual Exploitation: Stressing Urgency, Determination to Address Problem, Department Head Outlines Measures Taken so Far, U.N. Doc. GA/PK/186 (Apr. 4, 2005) [hereinafter April 2005 Press Release].

54. *Id.*

Secretary-General appoint a Group of Legal Experts to review and explore a framework that would ensure the accountability of United Nations staff and experts as well as members of military contingents on missions.<sup>55</sup>

Among the critical areas that require action are the adoption of a plan to ensure the criminal accountability of U.N. staff and experts on mission, a new Memorandum of Understanding (MOU) with each TCC incorporating the standards in the 2003 Bulletin in a legally effective manner, and a comprehensive policy on victim assistance.<sup>56</sup>

#### A. *Standardizing Norms of Conduct*

Perhaps the most significant progress has been made on identifying standardized norms of conduct for U.N. peacekeeping personnel. The basic and applicable standards of conduct for a U.N. peacekeeping operation derive from principles established in the U.N. Charter. These principles demand the highest standards of integrity from U.N. officials and are applicable to the civilian, military, and civilian police components of a U.N. peacekeeping operation.<sup>57</sup>

Although initially only U.N. staff members were expressly bound by the prohibitions in the Secretary-General's 2003 Bulletin, these standards have now been incorporated into the contracts, letters of engagement, and undertakings of all personnel.<sup>58</sup> Further, U.N. staff regulations have been amended to clarify that sexual exploitation and abuse are considered to be

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55. The Secretary-General, *Ensuring the Accountability of United Nations Staff and Experts on Mission with Respect to Criminal Acts Committed in Peacekeeping Operations*, delivered to the General Assembly, ¶ 1, U.N. Doc. A/60/980 (Aug. 16, 2006) [hereinafter *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*].

56. April 2005 Press Release, *supra* note 53.

57. U.N. Charter art. 101, ¶ 3; *id.* art. 105, ¶ 2.

58. GEN. ASSEMBLY, Special Comm. on Peacekeeping Operations, *Report of the Special Committee on Peacekeeping Operations and its Working Group at the 2006 Substantive Session*, ¶ 65, U.N. Doc. A/60/19 (Mar. 22, 2006) [hereinafter *Report of the Special Committee*]. Today, U.N. volunteers, consultants, individual and corporate contractors, peacekeepers with the status of "experts on mission" (including police officers and military observers) are all bound by the standards of the bulletin. 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*, ¶ 14, delivered to the General Assembly, U.N. Doc. A/60/862 (May 24, 2006) [hereinafter *Comprehensive Report*]. Civilian police and military observers have the status and the privileges and immunities of experts on mission under the General Convention which governs the conditions under which the immunity may be waived by the Secretary-General. Convention on the Privileges and Immunities of the United Nations, Art. IV, Feb. 13, 1946, 1 U.N.T.S. 15 [hereinafter *General Convention*]. Additionally, civilian police officers and military observers sign an "undertaking," agreeing to abide by all U.N. procedures, policies, and directives. ZEID REPORT, *supra* note 3, ¶ 18.

serious misconduct and may be grounds for disciplinary action, including dismissal.<sup>59</sup>

However, standards of conduct for members of military contingents remain an area of concern. While TCCs have accepted the rules of conduct in the *Ten Rules* and *We Are United Nations Peacekeepers* documents, they are merely listed as guidelines, which might give rise to the inference that they are non-binding.<sup>60</sup> Moreover, the expansive prohibitions of the Secretary-General's 2003 Bulletin are not contained in the guidelines.<sup>61</sup> As an initial step towards implementing the 2003 Bulletin standards for military contingents, a pre-deployment training module on preventing sexual abuse and exploitation with information on the 2003 Standards has been developed by the DPKO and is mandatory for all military and civilian personnel.<sup>62</sup> However, it is not clear whether this tool has been implemented and whether it is effective.<sup>63</sup> Since the issuance of the Zeid Report, 70%–90% of civilian police and military personnel have received some training on sexual abuse and exploitation.<sup>64</sup> The number of reported allegations of sexual misconduct, however, continues to grow.<sup>65</sup>

59. The Secretary-General, *The Secretary-General's Bulletin: Staff Regulations*, U.N. Doc. ST/SGB/2006/4 (Jan. 1, 2006).

60. April 2005 Press Release, *supra* note 53.

61. Miller, *supra* note 38.

62. *Comprehensive Report*, *supra* note 58, ¶ 15.

63. Office to Monitor and Combat Trafficking in Persons, U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: STOPPING HUMAN TRAFFICKING, SEXUAL EXPLOITATION, AND ABUSE BY INTERNATIONAL PEACEKEEPERS 231, June 12, 2007 [hereinafter U.S. STATE DEP'T REPORT].

64. Press Release, Security Council, Problem of Sexual Abuse by Peacekeepers now Openly Recognized, Broad Strategy in Place to Address it, Security Council Told, U.N. Doc. SC/8649 (Feb. 23, 2006) [hereinafter Press Release, U.N. Doc. SC/8649]. Between September 2005 and April 2006, 94% of all peacekeeping personnel deployed to Liberia were trained in Module 1: Prevention of sexual exploitation and abuse. *Comprehensive Report*, *supra* note 58, ¶ 15.

65. Between January 2005 and mid-May 2006, the United Nations investigated allegations of sexual exploitation by 307 peacekeepers. *Id.* ¶ 20. Sixteen civilians were dismissed and 155 uniformed peacekeepers were sent home as a result of the investigations. *Id.* See also General Assembly, Criminal Accountability of United Nations Officials and Experts on Mission, U.N. Doc. A/62/329 (Sept. 11, 2007) [hereinafter Criminal Accountability Note]. Between January and December 2006, "a total of 439 allegations of misconduct other than sexual exploitation and abuse were reported in missions led by the Department of Peacekeeping Operations." *Id.* ¶ 8. During that same period, "357 allegations of sexual exploitation and abuse were reported to the Office of Internal Oversight Services (OIOS). Of these allegations, 176 came from the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)." *Id.* ¶ 9. See also Francis Elliott & Ruth Elkins, *U.N. Shame Over Sex Scandal*, INDEP. Jan. 7, 2007 (reporting similar statistics).

The increase in the number of allegations of sexual exploitation and abuse involving United Nations peacekeeping personnel over the past three years can in part be explained by such personnel and the host population becoming more aware of United Nations standards of conduct and developing greater confidence in the ability of the United Nations to receive complaints in a confidential setting and to take swift action.

*Comprehensive Report*, *supra* note 58, ¶ 57.

### B. Investigation and Discipline

Investigation of sexual abuse and exploitation has been plagued with cumbersome procedural requirements and amateurism,<sup>66</sup> and the investigation process continues to be an area of concern.<sup>67</sup> Many have urged the Secretary-General to establish a permanent and independent investigative mechanism within the DPKO.<sup>68</sup> In response, the DPKO has instituted Conduct and Discipline Teams (CDTs) on most missions to receive and assess sexual exploitation complaints. Serious offenses are referred to the Office of Internal Oversight Services (OIOS), which is then responsible for investigating.<sup>69</sup> However, the Secretary-General acknowledged that the OIOS does not have sufficient resources and that there is a backlog of serious misconduct cases yet to be investigated.<sup>70</sup>

Other recommendations to improve investigation and enforcement include on-site courts-martial and using DNA and fingerprinting technology in the investigations.<sup>71</sup> Although not widely adopted, on-site

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66. ZEID REPORT, *supra* note 3, ¶¶ 28–29.

67. *Comprehensive Report*, *supra* note 58, ¶ 32.

68. *See, e.g.*, ZEID REPORT, *supra* note 3, ¶ 32. The investigative mechanism should report directly to the Secretary-General, have access to experts on sex crimes, evidentiary requirements, and standards of proof, and be used to investigate all types of peacekeeping personnel. *Id.* This new mechanism should replace the preliminary investigation and board of inquiry, which are duplicative and ineffectual, and the reliance on “enthusiastic amateurs” to conduct investigations. *Id.* It should have the authority to act in the mission area, and the mission authorities should be required to cooperate with investigators. *Id.* A TCC should be required to participate in any investigation of its own personnel, ensuring that evidence is gathered in accordance with the laws of the TCC so that it could be later used in criminal proceedings inside the TCC. *Id.* ¶ 33.

As of May 2006, the Department of Peacekeeping Operations “began training mission staff . . . on a web-based mechanism . . . to store[] reported allegations of misconduct.” *Comprehensive Report*, *supra* note 58, ¶ 21. Once operational, this program would “ensure that prior offenders are not rehired.” *Id.*

69. *Comprehensive Report*, *supra* note 58, ¶ 20; U.S. STATE DEP’T REPORT, *supra* note 63, at 231.

70. *Comprehensive Report*, *supra* note 58, ¶ 32. Pursuant to resolution 59/287, the DPKO transferred investigations of sexual exploitation and abuse to the OIOS, which lacks sufficient resources for the task. *Id.* The Secretary-General has urged the TCCs to complement the OIOS’s efforts pursuant to resolution 59/287. *Id.*

71. ZEID REPORT, *supra* note 3, ¶¶ 31, 35. For an analysis of the use of DNA, see Ashley R. Melson, *Bioterrorism, Biodefense, and Biotechnology in the Military: A Comparative Analysis of Legal and Ethical Issues in the Research, Development, and Use of Biotechnological Products on American and British Soldiers*, 14 ALB. L.J. SCI. & TECH. 497, 506 (2004). The author notes that sharing of biotechnology among allies in war can have detrimental consequences. *Id.* For example, collecting and storing DNA samples to determine soldiers’ genetic makeup may maximize troop potential, but may also be harmful to the soldier if the information were divulged by the military. *Id.* For instance, if countries are allies, both the soldier’s country and any allied countries could access detailed private information. *Id.*

courts-martial have been employed by at least two TCCs.<sup>72</sup> Proposals for DNA and fingerprinting technology, however, have not been implemented, due in part to a scarcity of resources.<sup>73</sup>

### C. Community Outreach and Conditions of Missions

In addition to intensive training, Prince Zeid's recommendations focused on community outreach, including explaining the U.N.'s policy against sexual exploitation and abuse and providing effective mechanisms for individuals to lodge complaints against U.N. personnel in a confidential setting.<sup>74</sup> The recently established CDTs are charged with implementing these duties.<sup>75</sup> Other recommendations focused on actions that might be taken within peacekeeping missions themselves, with the specific conditions of the mission in mind, to reduce the likelihood of sexual abuse and exploitation. As a result, where there have been allegations of sexual abuse and exploitation, some missions have instituted preventive measures such as telephone hotlines, off-limits areas, and the requirement that uniforms be worn at all times.<sup>76</sup>

Military contingents often serve under conditions of severe hardship. To facilitate the compliance of peacekeepers with the U.N.'s zero-tolerance policy, recommendations were made for regular periods of rest and relaxation away from mission areas, visits with family members, and access to welfare officers and staff counselors.<sup>77</sup> Presently, a welfare allocation of \$8 per month per soldier is paid by the U.N. to each TCC, but these funds are frequently not spent for their intended purpose.<sup>78</sup> A comprehensive strategy on welfare and recreation reform is under consideration. At the very least, the policy should require that the welfare allocation be used for the welfare of contingent members on the ground, for example, to establish fixed recreational sites inside or near the mission area.<sup>79</sup>

72. Press Release, U.N. Doc. SC/8649, *supra* note 64.

73. *Id.*

74. ZEID REPORT, *supra* note 3, ¶¶ 40–41. Each mission should implement a data collection and management system in order to track allegations and the mission's response to the allegations (for example, status of investigations and full-time personnel conduct officers should be installed at headquarters and in missions in order to implement these measures). *Id.* ¶ 41.

75. U.S. STATE DEP'T REPORT, *supra* note 63, at 231.

76. *Id.*

77. ZEID REPORT, *supra* note 3, ¶ 51.

78. *Id.* Prince Zeid further recommended that each mission provide emergency and practical assistance to victims who make allegations against U.N. peacekeeping personnel. *Id.* ¶ 52.

79. *Id.* ¶ 51. As of May 2006, several missions had established recreational facilities. *Comprehensive Report*, *supra* note 58, ¶ 16. For example, the mission in the Congo had a reporting

While many of these recommendations have been implemented in some missions, reform is by no means uniform or even widespread.

#### *D. Increase of Female Participation in Peacekeeping Missions*

All proposals for reforming peacekeeping operations recognize the need for more female peacekeepers, especially at senior levels.<sup>80</sup> A higher percentage of female peacekeepers is necessary to facilitate an environment that discourages sexual exploitation and abuse.<sup>81</sup> Although the number of female peacekeepers has increased in recent years, the number remains unacceptably low. The DPKO has attempted to remedy this disparity and convened a policy dialogue with fifty-five TCCs in March 2006, at which Member States were asked to double the number of female peacekeepers within the next few years.<sup>82</sup> In an innovative program, India deployed an all-women team of U.N. peacekeepers in Liberia and the U.N. sponsored a conference of gender experts to discuss ways to encourage more female participation.<sup>83</sup> One U.N. official “noted that there are certain specific responsibilities that women in most cases perform better than male officers, namely sexual assault cases and in some instances child abuse cases where the victims—mostly female, feel more at ease, culturally and emotionally, dealing with a female officer.”<sup>84</sup>

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and evacuation center which doubles as a recreational center. *Id.* To maintain morale, a TCC in Burundi “provides its soldiers with free satellite television and telephone facilities and offers spiritual guidance and counseling.” *Id.* See also U.S. STATE DEP’T REPORT, *supra* note 63, at 232.

80. ZEID REPORT, *supra* note 3, ¶ 43; PeaceWomen.org, U.N. Special Committee on Peacekeeping Operations (C-34) 2007 Session General Debate: Feb. 26–27, 2007, <http://www.peacewomen.org/un/pkwatch/Events/C34/2007/sessionindex.html>.

81. ZEID REPORT, *supra* note 3, ¶ 43.

82. U.N. YEAR REVIEW, *supra* note 22, at 18. Although women make up almost thirty percent of civilian staff and have headed peacekeeping missions in Bosnia and Herzegovina, Burundi, and Georgia, women remain a minority of military personnel. *Id.* In March 2006, the DPKO met with fifty-five TCCs and agreed that steps must be taken to correct this deficit. *Id.* The DPKO’s long-term goal is for ten percent female representation. *Id.* Additionally, TCCs were asked to double the number of female uniformed peacekeepers every year. *Id.* To date, Nigeria has supplied forty-nine female police officers, followed by India and Bangladesh both contributing thirty-four, and the U.S. contributing twenty-four female police officers. *Id.* Early in 2007, Nigeria was expected to deploy an all-women police contingent in Darfur and India sent a similar contingent to Liberia last year. *Id.* at 19.

83. *Female Peacekeepers Reach Liberia: The First All-Female Unit of the United Nations has Arrived in Liberia’s Capital, Monrovia*, BBC NEWS, Jan. 30, 2007, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/Africa/6314263.stm>.

84. *U.N. Police Workshop in Italy is Latest Effort to Attract More Female Officers Into the Force*, U.N. NEWS CENTRE, Mar. 17, 2007, <http://www.un.org/apps/news/story.asp?NewsID=21905&Cr=policy&Cr1>.

## VI. PROPOSALS REQUIRING URGENT ACTION

A. *Accountability of U.N. Staff and Experts on Missions*

In August 2006, the Group of Legal Experts appointed by the Secretary-General to examine and report on accountability of U.N. staff and experts on mission issued its report.<sup>85</sup> Its recommendations were designed to ensure that such personnel would be held responsible in all instances for criminal acts in accordance with established principles of due process.<sup>86</sup> The Group of Legal Experts also made recommendations for improving administrative investigations.<sup>87</sup>

Under the Convention on the Privileges and Immunities of the United Nations, U.N. personnel are immune from criminal prosecution by national authorities for acts performed in the course of their official duties unless such immunity is waived by the Secretary-General.<sup>88</sup> Through various agreements, this immunity extends to civilian police, military observers, and volunteers. Where a Host State's legal system is dysfunctional, the Secretary-General is unlikely to waive a peacekeeper's immunity from criminal prosecution.<sup>89</sup> The Group of Legal Experts recommended a new international convention,<sup>90</sup> which would not undermine the immunity of the U.N. but would "create conditions which make it easier for any applicable immunity to be waived."<sup>91</sup>

The Group of Legal Experts first recommended that the Host State be given priority in exercising jurisdiction since, in most instances, witnesses and evidence are more accessible locally.<sup>92</sup> In addition, the Group of Legal

85. See *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55.

86. *Id.* at Note by the Secretary-General.

87. *Id.* ¶¶ 81–84.

88. General Convention, *supra* note 58, §§ 11, 14, 18–20, 22, 23. In practice, the discretion to waive immunity is delegated to Legal Counsel. ZEID REPORT, *supra* note 3, ¶ A.3.

89. *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55, ¶ 22.

90. *Id.* at Annex III. A draft text of an international Convention, included in *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, is modeled after the numerous treaties dealing with terrorism. *Id.*

91. *Id.* ¶ 68.

92. *Id.* ¶ 27. The Host State's exercise of jurisdiction is preferable for a variety of reasons, including:

- (a) The host State is the State on whose territory the crime was committed. . . .
- (b) The host State is likely to be the place where most of the witnesses and evidence are located. . . .

. . . .

- (d) Holding trials in the host State will give the local population a greater sense of justice. . . . This is important in demonstrating the commitment of the United Nations to the rule of law.

*Id.*



Experts reported that holding trials in the Host State would “give the local population a greater sense of justice being done and being seen as being done.”<sup>93</sup> In order to facilitate such jurisdiction, the capacity of the investigatory, prosecutorial, adjudicatory, and custodial institutions of the Host State should be built up to “enable the host State to exercise jurisdiction over all persons, including peacekeeping personnel, in accordance with international standards for human rights and due process.”<sup>94</sup> The proposed Convention provides that jurisdiction could also be exercised by the state of the alleged offender’s nationality if the conduct constitutes a crime in both the Host State and the state of nationality of the offender,<sup>95</sup> the state where the offender is found if it will not extradite,<sup>96</sup> or the state of habitual residence for a stateless offender.<sup>97</sup> The Group of Legal Experts also explored the feasibility of jurisdiction in an international court or tribunal, “such as the International Criminal Court [(ICC)] or . . . a new judicial institution,” but acknowledged the conceptual and practical difficulties with such a proposal.<sup>98</sup> The main obstacle is that international tribunals typically exercise jurisdiction only over conduct that constitutes the most serious crimes “in international law, including genocide, war crimes and crimes against humanity.”<sup>99</sup> Rape and solicitation of a prostitute, although serious offenses, would not likely fall within an international tribunal’s jurisdiction, unless they were committed as part of a widespread or systematic attack in furtherance of a state

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93. *Id.*

94. *Id.* ¶ 38. *See also id.* ¶ 39 (discussing obstacles to “capacity-building”).

95. *Id.* ¶ 59. A panel of legal experts met in 2006 to make recommendations on how standards contained in the 2003 Bulletin could bind TCCs in the period prior to the conclusion of a MOU and how to standardize norms of conduct so that they are applicable to all categories of peacekeepers. The Secretary-General, *Making the Standards Contained in the Secretary-General’s Bulletin Binding on Contingent Members and Standardizing the Norms of Conduct so that They are Applicable to All Categories of Peacekeeping Personnel*, ¶ 16, delivered to the General Assembly, U.N. Doc. A/61/645 (Dec. 18, 2006) [hereinafter *Making the Secretary-General’s Bulletin Standards Binding on Contingent Members*].

96. *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55, ¶ 59. The exercise of jurisdiction of the state where an alleged offender is found is controversial because such exercise would be based on Universal Jurisdiction, which is normally reserved for more serious and widespread crimes against humanity. *Id.* ¶¶ 53–58.

97. *Id.* ¶ 60. The Group of Legal Experts later made recommendations on how investigations should be conducted that reflected awareness of not only investigational requirements for U.N. disciplinary action, but the evidentiary and procedural laws of the prosecuting States that make criminal proceedings possible. *Id.* ¶ 84.

98. *Id.* ¶ 70. *See also id.* ¶¶ 69, 71 (discussing prosecution in an international tribunal). For example, a hybrid tribunal could only be created with the consent of the Host State and is resource intensive. *Id.* ¶¶ 73, 71(b).

99. *Id.* ¶ 71(a). *See generally id.* ¶¶ 71–75.

policy.<sup>100</sup> Further, not all states have accepted the jurisdiction of the ICC and the creation of a new tribunal via a Security Council resolution is unlikely.<sup>101</sup>

The draft Convention<sup>102</sup> is problematic in several respects. A United Nations official or expert on mission commits a crime within the meaning of the draft Convention if he engages in “[r]ape and acts of sexual violence” or “[s]exual offenses involving children.”<sup>103</sup> The act of offering food or money to an adult woman in exchange for sex does not appear to be a crime under the proposed Convention although such an act does violate the standards contained in the 2003 Bulletin. While some states do not criminalize so-called voluntary prostitution, prostitution in the peacekeeping context involves an imbalance of power and is inherently coercive. Peacekeepers occupy a position of trust in the Host State. Thus, prostitution in any form exploits the vulnerability and extreme poverty of the very population that the peacekeepers are sent to protect, thereby exacerbating the emotional trauma already inflicted on the members of the local community. Often a woman or girl trades the only material asset she has, her body, as a means of survival.<sup>104</sup>

While it is unclear whether excluding the solicitation of prostitutes from the list of crimes was intentional or an oversight, the drafters offered as an alternate definition of the crimes: “[c]rimes of intentional violence against the person and sexual offences punishable under the national law of that State party by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] years(s), or by a more severe penalty.”<sup>105</sup>

The draft Convention was discussed by the Ad Hoc Committee on Criminal Accountability of United Nations Officials and Experts on Mission (Ad Hoc Committee) at a week-long meeting in April 2007.<sup>106</sup>

100. See *id.* ¶ 71(e); U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, June 15–July 17, 1998, *Rome Statute of the International Criminal Court*, Art. 7, U.N. Doc. A/CONF.183/9\*.

101. *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55, ¶ 71(d).

102. The draft Convention was adapted from the International Convention for the Suppression of Acts of Nuclear Terrorism. *Id.* at n.21. (citing G.A. Res. 59/290, annex, art. 2, U.N. Doc. A/RES/59/290 (Apr. 15, 2005)).

103. *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55, Annex III, art. 3.

104. Shotton, *supra* note 31, at 102.

105. *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55, Annex III, art. 3.

106. General Assembly, Ad Hoc Committee on Criminal Accountability of United Nations Officials and Experts on Mission, *Report of the Ad Hoc Committee on Criminal Accountability of U.N.*

Questions were raised concerning quasi-universal jurisdiction and the extradition or prosecution regime proposed in the Convention.<sup>107</sup> Questions were also raised concerning the scope of the Convention both as to the crimes (*ratione materiae*)<sup>108</sup> and the personnel (*ratione personae*) that would be subject to the Convention.<sup>109</sup> It was suggested by numerous delegations that, given the elaborate process and resources necessary to conclude an international Convention, the Convention might be expanded to include other operations and categories of personnel such as those participating in United Nations operations in the field and staff of specialized agencies.<sup>110</sup> Other delegations expressed the view that the proposed Convention should “apply to other crimes such as theft . . . , money-laundering and torture,” while some delegations questioned the need for a Convention at this time.<sup>111</sup> The Ad Hoc Committee concluded that discussion on precise terms of the Convention was premature and should be delayed until a later stage.<sup>112</sup>

On September 11, 2007, the U.N. Secretariat issued a Note supporting a new international Convention as proposed by the Group of Legal Experts and incorporating the comments of the Ad Hoc Committee on expanding the scope of the Convention as it applied both to personnel and to crimes.<sup>113</sup> The U.N. Secretariat proposed that the Convention should apply to all personnel of U.N. operations, including contractors and consultants,

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*Officials and Experts on Mission*, ¶ 7, U.N. Doc. A/62/54 (Apr. 19, 2007) [hereinafter *Report of the Ad Hoc Committee*].

107. *Id.* ¶ 25. For example, the Canadian, Australian, and New Zealand delegation conceded that quasi-jurisdiction over such crimes would be inappropriate. New Zealand Permanent Mission to the United Nations, Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, *Statement by Mr. Scott Sherran* (Apr. 9, 2007), available at <http://www.nzembassy.com/home.cfm?c=51> (follow New Zealand’s UN statements; then follow 9 April 2007—Criminal Accountability of UN officials and Experts). In some areas it would be too broad, whereas in other areas it would be too narrow. *Id.* “One such question would be whether the Convention should cover not just civilian staff of peacekeeping missions, but also civilian staff in other U.N. operations, for example, those established for the purpose of delivering humanitarian, political or developmental assistance.” *Id.*

108. *Report of the Ad Hoc Committee*, *supra* note 106, ¶¶ 18–21.

109. *Id.* ¶¶ 22–24.

110. *Id.* ¶ 19.

111. *Id.* ¶ 22. Recently, the BBC reported that Pakistani peacekeeping troops traded gold and sold weapons to the very people they were meant to disarm. Martin Plaut, *U.N. Troops “Traded Gold for Guns”*, BBC NEWS, May 23, 2007, <http://news.bbc.co.uk/2/hi/africa/6681457.stm>.

112. Cuban Ministry of Foreign Affairs, *Statement by Ambassador Ileana Nunez Mordoche, Deputy Permanent Representative of Cuba, on Behalf of the Non-Aligned Movement, on the Ad Hoc Committee on Criminal Accountability of United Nations Officials and Experts on Mission*, Apr. 9, 2007, available at <http://www.cubaminrex.cu/English/currentissues/2007/Abril/statement-Ambassador-Ileana.htm>.

113. Criminal Accountability Note, *supra* note 65.

not just to personnel engaged in peacekeeping operations,<sup>114</sup> and reaffirmed that military members of national contingents “are subject to the exclusive jurisdiction of the sending State.”<sup>115</sup>

The new Convention would not be limited to crimes against the person or crimes involving sexual exploitation and abuse, but would be comprehensive enough to include crimes such as gold smuggling or trafficking in weapons, which have also been alleged in recent peacekeeping operations.<sup>116</sup>

The Note recommended that the Convention not “list the crimes to be covered, nor specify how crimes should be defined.”<sup>117</sup> Instead, the Secretariat drew on prior model Conventions as precedent to describe crimes covered by a Convention and endorsed the alternate definition of crimes contained in the Report of the Group of Legal Experts.<sup>118</sup> Thus, the Convention would cover crimes, “as they are known and defined under the national law of the State asserting jurisdiction and that are punishable under that nation’s law by at least two/three years’ imprisonment.”<sup>119</sup>

While it is desirable that a new international Convention cover not only crimes of sexual abuse and exploitation, the definition of crimes raises serious issues for implementing the U.N.’s zero tolerance policy. Under both the Report of the Group of Legal Experts and the Note of the Secretariat, the criminal nature of an act would depend upon the domestic law of the state exercising jurisdiction. Soliciting a prostitute could be considered a crime only if punishable by imprisonment or another severe penalty in the state exercising jurisdiction. Since so-called voluntary prostitution is not criminalized in all states, the same conduct by U.N. officials and experts on mission may or may not be criminal depending upon which state exercises jurisdiction.

The Secretary-General reported that:

In 2005, nearly half of all sexual exploitation and abuse allegations made against United Nations peacekeeping personnel involved prostitution or transactions of a similar nature where money, goods

114. The Report of Legal Experts, which discussed accountability in terms solely of peacekeeping operations, was limited by its terms of reference. *See generally Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55.

115. Criminal Accountability Note, *supra* note 65, at 2.

116. *Id.* ¶ 37.

117. *Id.* ¶ 39.

118. *Id.* ¶ 40.

119. *Id.* The Note cites as precedent for so defining the applicable crimes the United Nations Model Treaty on Extradition. *Id.* ¶ 40. Article 2 of the Model Treaty defines extraditable offenses as those crimes punishable by a minimum sentence of imprisonment of one to two years. *Id.*

or services were exchanged for sexual favours. Adherence to the United Nations prohibition on engagement in prostitution among both civilians and uniformed personnel would therefore bring the United Nations considerably closer towards full implementation of my zero-tolerance policy of sexual exploitation and abuse.<sup>120</sup>

It is therefore clear that in order to implement the zero-tolerance policy, prostitution must be prohibited in all instances. The new international Convention should explicitly criminalize prostitution in the peacekeeping context because of its inherently coercive character. Thus, a state that signs a treaty criminalizing prostitution in peacekeeping operations is deemed to have recognized the inherently coercive nature of peacekeeper prostitution and distinguished it from so-called voluntary prostitution, which may be legal under the state's domestic law.

While an international Convention is an important step in ensuring the accountability of U.N. related personnel, such a Convention will take time to come into force. This is particularly relevant since the Note of the Secretariat proposes expanding the scope of the Convention both as to the crimes and personnel covered. Moreover, it can only be implemented with the consent of the Member States. Finally, given various delegations' concerns about the necessity of the Convention and the need to coordinate with various other U.N. committees, there is little likelihood that the Convention will enter into force in the near future.<sup>121</sup>

#### *B. Revised Memorandum of Understanding with Troop Contributing Countries*

Although each peacekeeping mission is composed of both civilian and military personnel, recently peacekeeping missions have been overwhelmingly composed of military personnel.<sup>122</sup> Since the United Nations does not have any military of its own, it relies on a relatively small number of countries, mainly developing countries,<sup>123</sup> to contribute

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120. *Comprehensive Report*, *supra* note 58, ¶ 35. "To that end, the Department of Peacekeeping Operations is planning to launch two campaigns in the 2006–07 period: an anti-prostitution campaign and another emphasizing peacekeepers' duty of care to the host population." *Id.*

121. *Ensuring Criminal Accountability of U.N. Staff and Experts on Mission*, *supra* note 55, ¶ 64. Recognizing that a new Convention would take time to implement, the Group of Legal Experts also suggested steps that the General Assembly could take to ensure accountability in the interim. *Id.* ¶ 65.

122. U.N. Dep't of Public Information, Peace and Security, *U.N. Peacekeeping Operations: Background Note*, U.N. Doc. No. DPI/1634/Rev.65 (Oct. 31, 2006), available at <http://www.un.org/Depts/dpko/dpko/bnote010101.pdf>.

123. As of April 30, 2007, the ten countries contributing the greatest number of troops are

military personnel and civilian police to staff its many peacekeeping and peace building operations.<sup>124</sup> Once a Member State agrees to provide troops, the TCC and the United Nations enter into a MOU that “establish[es] the administrative, logistical and financial terms and conditions to govern the contribution of personnel, equipment and services provided by the Government in support of [a particular U.N.] peacekeeping mission.”<sup>125</sup>

Under the Status of Forces Agreement, which the U.N. and the Host State negotiate, each TCC retains exclusive jurisdiction to prosecute and otherwise discipline its military personnel.<sup>126</sup> This immunity cannot be waived by the Secretary-General since jurisdiction is exclusive to the TCC.<sup>127</sup> TCCs are united in their insistence that military personnel should not be subject to disciplinary action by the United Nations or by any other state, including the Host State.<sup>128</sup> Unfortunately, however, TCCs have a

Bangladesh, France, Ghana, India, Italy, Jordan, Nepal, Nigeria, Pakistan, and Uruguay. U.N. DEP’T OF PUBLIC INFORMATION, PEACE AND SECURITY, *Monthly Summary of Contributors of Military and Civilian Police Personnel* (Apr. 30, 2007), [http://www.un.org/Depts/dpko/dpko/contributors/2007/apr07\\_2.pdf](http://www.un.org/Depts/dpko/dpko/contributors/2007/apr07_2.pdf).

124. U.N. Dep’t of Public Information, *International Day of United Nations Peacekeepers*, U.N. Doc. DPI/2311 (May 29, 2003), <http://www.un.org/events/peacekeepers/2003/docs/qanda.htm>. For each military personnel deployed, the U.N. pays the TCC \$1,000 per troop per month. *Id.* For some TCCs, this is a significant source of income. *See* U.N. DEP’T OF PUBLIC INFORMATION, PEACE AND SECURITY, *Monthly Summary of Contributors of Military and Civilian Police Personnel* (Apr. 30, 2007), [http://www.un.org/Depts/dpko/dpko/contributors/2007/apr07\\_2.pdf](http://www.un.org/Depts/dpko/dpko/contributors/2007/apr07_2.pdf). Unlike financial support for peacekeeping, which is mandatory for Member States, the contribution of personnel (soldiers, military observers, civilian police), equipment, supplies or other support for peacekeeping operations is entirely voluntary. *Id.* Member States who do contribute essential elements are reimbursed from the mission budget at agreed-upon rates.

125. *See* U.N. General Assembly, *Revised Draft Memorandum of Understanding Between the United Nations and [Participating State] Contributing Resources to [the United Nations Peacekeeping Operation]*, U.N. Doc. A/61/494, 4 (Oct. 3, 2006) [hereinafter *Secretary-General’s Revised MOU*].

126. Criminal Accountability Note, *supra* note 65, at 2. Indeed, no country has been willing to subject its military contingents to the jurisdiction of a foreign nation. The U.S. has been at the forefront of this resistance to any international criminal tribunal, such as the ICC, complaining about the lack of procedural safeguards and checks on the authority of the ICC. *See* John Washburn, *Assessments of the United States Position: The International Criminal Court Arrives – The U.S. Position: Status and Prospects*, 25 *FORDHAM INT’L L.J.* 873, 873–874 (2002); Anthony Arnold, *Trial by Fire: The International Criminal Court Pushes Ahead*, *HARV. INT’L REV.*, Winter 2003, at 11, available at <http://www.globalpolicy.org/intljustice/icc/2003/0201trial.htm>.

127. The Secretary-General, *Model Status-of Forces Agreement for Peacekeeping Operations*, ¶ 41, delivered to the General Assembly, U.N. Doc. A/45/594, Annex (Oct. 9, 1990). *See also* ZEID REPORT, *supra* note 3, ¶ 78. The Special Committee on Peacekeeping Operations made its recommendations without challenging the right of a TCC to exercise exclusive jurisdiction over its own contingents. *Report of the Special Committee*, *supra* note 58, ¶ 72.

128. For example, in discussing the Convention on accountability of U.N. personnel, Sudan, speaking for the African group, emphasized that military personnel should remain under the jurisdiction of the TCC. Statement by Mr. Yasir Abdelsalam Permanent mission of the Republic of Sudan to the United Nations: Before the Meeting of the Ad Hoc Committee on Criminal

poor record of holding their personnel accountable for such violations.<sup>129</sup> Often the perpetrators are sent home and no further action is taken by the home country, making it impossible for victims to determine what, if any, punishment was imposed.<sup>130</sup> Although the Model Status of Forces Agreement requires the Secretary-General to “obtain formal assurances from a TCC that it would exercise jurisdiction with respect to crimes [or offenses] committed . . . in the mission area,”<sup>131</sup> in practice these assurances have not been requested.<sup>132</sup>

A revised MOU that would incorporate the standards contained in the Secretary-General’s 2003 Bulletin<sup>133</sup> in a legally effective way within the legal system of the TCC has been urged by the U.N., NGOs, and some governments, including that of the United States.<sup>134</sup>

While negotiations concerning the adoption of a revised MOU continue, the Group of Legal Experts recommended that as an interim measure, the Department of Peacekeeping Operations state in a *note verbale* to TCCs that the contribution of national contingents is made with the understanding that the TCC take steps to ensure to investigate and punish substantiated allegations of sexual abuse and exploitation as set forth in the 2003 Bulletin.<sup>135</sup>

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Accountability of United Nations Officials and Experts on Mission, Apr. 9, 2007. This written statement, distributed at the Ad Hoc Committee, is in the author’s possession.

129. On March 1, 2005, Kim R. Holmes, Assistant Secretary for International Organization Affairs, criticized the U.N. and DPKO for failing to “create a culture that rejects and penalizes exploitation and abuse at every level of peacekeeping.” See Kim R. Holmes, *Statement on United Nations Organization Mission in the Democratic Republic of Congo (MONUC) and Peacekeeping Reform before House of Representatives International Relations Committee* (Mar. 1, 2005), available at <http://www.state.gov/p/io/rls/rm/42982.htm>.

130. See Vanessa L. Kent, *Peacekeepers as Perpetrators of Abuse*, 14 AFR. SEC. REV. 85, 87, 89 (2005), available at <http://www.issafrika.org/pubs/ASR/14No2/EKent.pdf>. Even in cases in which the U.N. has repatriated military peacekeepers, “crimes are often ignored and rarely punished: absentee fathers, rapists and murderers simply disappear back in their own countries.” *Id.* at 85.

131. ZEID REPORT, *supra* note 3, ¶ 78.

132. *Id.* at A.27. The Model Status of Forces Agreement envisaged that the provision regarding the Secretary-General obtaining assurances from the governments of participating states “would be inserted into the memorandums of understanding, however, no such provision is included in the model memorandum of understanding . . . although it was in some early memorandums of understanding . . . .”

133. *Making the Secretary-General’s Bulletin Standards Binding on Contingent Members*, *supra* note 95, ¶ 4. Since the adoption of a new MOU requires extensive negotiations with the TCCs and would require time to implement, the Group of Legal Experts also made recommendations for binding military contingents to the standards set out in the 2003 Bulletin *before* a revised Memorandum of Understanding could be drafted and adopted. The Group’s recommendations for ensuring compliance with the standards set out in the 2003 Bulletin by military contingents are meant to be temporary, and would not prevent sexual exploitation as effectively as an actual treaty.

134. U.S. STATE DEP’T REPORT, *supra* note 63.

135. *Making the Secretary-General’s Bulletin Standards Binding on Contingent Members*, *supra*

A new MOU is crucial to the realization of the zero tolerance policy since the vast majority of allegations of sexual abuse have been leveled against members of military contingents. After consultation with the Member States, the Secretary-General issued a revised draft model MOU on October 3, 2006.<sup>136</sup> It specifically affirms the long-standing policy that military members of national contingents are subject to the TCC's exclusive jurisdiction.<sup>137</sup> However, exclusive jurisdiction is based on the understanding that the TCC will, in fact, exercise jurisdiction with respect to crimes and offences committed by the TCC's national contingent.<sup>138</sup>

The revised MOU incorporates the U.N. standards of conduct, the *Ten Rules, We Are United Nations Peacekeepers*, and the prohibitions on sexual exploitation and abuse contained in the 2003 Bulletin.<sup>139</sup> It requires the TCC to issue the U.N. standards as binding standards under the laws or disciplinary code of its contingent's members.<sup>140</sup> While not referring to prostitution specifically, by incorporating the language in the 2003 Bulletin, frequenting prostitutes would be prohibited conduct.

The revised MOU requires the TCC to vest each commander of a contingent with the authority necessary to ensure compliance with U.N. standards of conduct, mission standards, and local laws and regulations, and to report all discipline to the U.N. Force Commander.<sup>141</sup> Additionally, the TCC must cooperate with any U.N. investigation and share necessary information.<sup>142</sup> The U.N. may repatriate a national contingent commander who has failed to exercise effective command.<sup>143</sup> The TCC may then

note 95, ¶¶ 12–15.

136. *Secretary-General's Revised MOU*, *supra* note 125.

137. *Id.* at 7–8. If the TCC suspects a member of its national contingent has committed such misconduct, it will inform the U.N. and forward the allegations to the appropriate authorities. If the investigation of an alleged crime, conducted either by the U.N. or the TCC, is well-founded, the TCC must forward the case to its appropriate authorities, submit progress reports to the Secretary-General, and, ultimately, inform the Secretary-General of the outcome of the case. *Id.*

138. *Id.*

139. *Id.* at Annex H. Added to the purpose of the MOU is the following language: “and to provide for the maintenance of discipline and good order among such personnel and the investigation of, and accountability for, violations.” *Id.* art. 3.

140. *Id.* at Annex H. In order to ensure compliance, the MOU requires that the contingent's members receive pre-deployment training regarding these U.N. standards.

141. *Id.* Although the MOU vests ultimate authority (and responsibility) with the commander of the contingent, the MOU falls short of imposing financial burdens on the commander as proposed in the Zeid Report. The Zeid Report suggests that the troop-contributing country take disciplinary action against contingent commanders who are removed due to noncompliance. ZEID REPORT, *supra* note 3, ¶ 61. Further, the Zeid Report suggests that the U.N. recover all payments made to the commander and that these monies be paid to the trust fund for victims. *Id.* Additionally, it does not adopt the Report's elaborate letter commendation recommendations.

142. *Id.* at Annex H.

143. *Id.*



prosecute or take disciplinary action against such national contingent commander.<sup>144</sup>

With respect to financial accountability, all child-support claims would be forwarded by the TCC to its appropriate national authorities.<sup>145</sup> If these claims are accompanied by credible evidence of paternity, the TCC must assist the claimant in filing and pursuing her claim before the national authorities.<sup>146</sup>

While the revised MOU incorporates the 2003 standards, it is subject to negotiation and must be adopted by each TCC. The Under-Secretary General for Peacekeeping Operations acknowledged that discipline in the field must be improved but indicated that some states opposed the introduction of such standards in a revised MOU.<sup>147</sup> He called on those unnamed countries to rethink their position.<sup>148</sup>

Since prosecution for violations of the standards will continue to rest with the TCC, unless adequate sanctions for failure to prosecute are implemented, such as withdrawal of contingents or disqualification from participation in peacekeeping operations, the revised MOU will not achieve its goal of making the standards legally binding on members of military contingents. Indeed the mantra, that it is the responsibility of the Member State—not the U.N.—to discipline members of military contingents, will continue.<sup>149</sup> Despite repeated urging by NGOs and Member States, including the United States, no action has been taken on the revised MOU.<sup>150</sup>

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144. *Id.*

145. *Id.* art. 7(2) septiens.

146. *Id.* art. 7(3) septiens.

147. See U.N. Peacekeepers Need Formal Discipline, United Press Int'l, May 30, 2007, available at [http://www.upi.com/International\\_Intelligence/Briefing/2007/05/30/un\\_peacekeepers\\_need\\_formal\\_discipline/1507](http://www.upi.com/International_Intelligence/Briefing/2007/05/30/un_peacekeepers_need_formal_discipline/1507).

148. *Id.*

149. In response to this accountability deficit, the U.S. Congress threatened to cut funds to the U.N. in the absence of a revised MOU. Henry J. Hyde United Nations Reform Act of 2005, H.R. 2745, 109th Cong. (2005). The proposed bill, in the end, failed to pass Congress.

150. PeaceWomen.org, U.N. Special Committee on Peacekeeping Operations (C-34) 2007 Session General Debate; Feb. 26–27, 2007, <http://www.peacewomen.org/un/pkwatch/Events/C34/2007/sessionindex.html>. In commenting on the revised MOU, Prince Zeid noted that, “[a] revised memorandum of understanding could reduce significantly the number of cases of sexual exploitation and abuse, and would provide greater justice to victims.” Press Release, General Assembly, *Special Committee Continues Consideration of Measures Aimed at Sexual Exploitation by Peacekeepers: Revised Model Memorandum of Understanding, Draft Victim Assistance Strategy Discussed*, U.N. Doc. GA/PK/190 (July 27, 2006) [hereinafter July 2006 Press Release].

### C. *Victim Assistance Policy*

Although there is general agreement on the urgent need for a strategy of assistance to victims of sexual exploitation and abuse, currently no clear system is in place. Thus, “[i]t is likely that there are victims of sexual exploitation and abuse by United Nations staff or related personnel in almost all countries where the United Nations has a presence.”<sup>151</sup> In May 2006, the Secretary-General submitted to the General Assembly a draft of a U.N. policy statement on strategy for assisting and supporting victims who were sexually exploited and abused by United Nations staff or related personnel.<sup>152</sup> This Draft Victim Assistance Policy, now pending before the General Assembly, requires that the U.N. provide assistance and support to compensate victims and children born as a result of sexual abuse and exploitation by U.N. staff or related personnel.<sup>153</sup> Financial and technical support include medical services, legal services, immediate basic material care, emergency shelter, educational opportunities, and expanded psychosocial services to assist victims and raise awareness within the local communities.<sup>154</sup>

While insisting that the U.N. bears no legal liability for sexual misconduct of U.N. peacekeepers, the Draft Victim Assistance Policy recommends that a funding mechanism be established by the United Nations to fund such assistance through a centralized “Headquarters-based trust fund.”<sup>155</sup> Contributions would be made by “departments, agencies, funds and programmes” within the United Nations and, also, by TCCs.<sup>156</sup> The categories of persons to receive help include complainants, victims, and “children born as a result of sexual exploitation and abuse by [U.N.] staff or related personnel.”<sup>157</sup> An international group probing the scandal in Congo found that “at least 82 women and girls had been made pregnant

151. The Secretary-General, *Draft United Nations Policy Statement and Draft Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff or Related Personnel*, Annex ¶ 2, delivered to the General Assembly, U.N. Doc. A/60/877 (June 5, 2006) [hereinafter *Victim Assistance Draft Policy Statement*].

152. *Id.* The Task Force on Protection from Sexual Exploitation and Abuse, established by the Executive Committees on Peace and Security and on Humanitarian Affairs, was charged with developing a policy for victim assistance and support in February 2005. *Id.* § A ¶ 1.

153. *Id.* ¶ 3.

154. *Id.* ¶¶ 8, 18, 20, 34.

155. *Id.* § B ¶ 42.

156. *Id.* ¶ 44. Alternative proposals include funds overseen by a Resident Coordinator/Humanitarian Coordinator and victim assistance allocations in the mission’s budget. *Id.* § B ¶ 42.

157. *Id.* § B ¶ 14. See also *id.* § B ¶¶ 16–23.

by Moroccan peacekeepers” and fifty-nine others by U.N. personnel from Uruguay.<sup>158</sup>

The Draft Victim Assistance Policy provides that where children are born of U.N. Staff or related personnel and a functioning legal system exists, the U.N. should assist in establishing paternity and obtaining a court order for child support.<sup>159</sup> If no functioning legal system exists, the U.N. can assist through DNA testing of the child and the alleged father.<sup>160</sup> If the paternity of a U.N. staff member is established and the staff member does not comply with a court order for support, deductions from salary could be made or, if the member has been separated, “a calculated lump sum amount should be deducted from the staff member’s final emoluments and paid to the child or his/her mother or guardian.”<sup>161</sup> If the paternity claim involves a member of a military contingent, the policy requires the U.N. to assist the child and the mother or guardian in making the claim and then forwarding it to the proper TCC authorities for consideration.<sup>162</sup>

The policy falls short of the recommendations made by NGOs and the Zeid Report. In addition to a trust fund for victims and children who are born to the peacekeepers,<sup>163</sup> Zeid recommended that soldiers found guilty of sexual abuse have their daily allowances garnished in order to contribute towards the trust fund.<sup>164</sup> The TCC could then recoup those sums from the soldier involved.<sup>165</sup> To date, the U.N. has not implemented either Zeid’s recommendations or the draft U.N. policy to provide assistance and support to the victims. The concern that such assistance might constitute an admission of peacekeeper misconduct has contributed

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158. Editorial, *Push to Make Dads of ‘Peacekeeper Babies’ Pay*, THE WEEKEND AUSTRALIAN, Mar. 26, 2005, at 15.

159. Victim Assistance Draft Policy Statement, *supra* note 151, at 14.

160. *Id.* Prior drafts of the victim’s assistance draft policy contained a proposal for comprehensive DNA sampling of all United Nations staff to help substantiate allegations of paternity or allegations of involvement in a sex crime. *Id.* at 2. This proposal built on the recommendations contained in the Zeid Report, but legal, ethical and human resource issues were raised, and the proposal was not adopted. *Id.* Pursuant to existing United Nations Staff Regulations and Rules, fines may be assessed against individual perpetrators and deducted from the staff member’s salary and/or final disbursement if the staff member has already been dismissed. *Id.* at 14.

161. *Id.*

162. *Id.* at 14–15.

163. ZEID REPORT, *supra* note 3, ¶ 75.

164. *Id.*

165. *Id.*

to the delay.<sup>166</sup> Prince Zeid has called this failure to adopt a policy “unacceptable.”<sup>167</sup>

Refugees International, an NGO, commended the progress made by the U.N. but was particularly critical of the lack of victim assistance.<sup>168</sup> Its report stressed that a cultural/behavioral change was necessary in addition to the policy and structural changes.<sup>169</sup> It also noted that “[m]any of the victims of sexual exploitation and abuse do not see themselves as victims.”<sup>170</sup> Rather, they are survivors because they are doing what they must to support themselves and their families in a hostile environment.<sup>171</sup> Women in post-conflict countries should have the means to move beyond mere survival. The report urged donors to focus on providing income generating assistance for women,<sup>172</sup> such as micro-credit schemes modeled on the highly successful programs in other post-conflict situations.<sup>173</sup>

## VII. CONCLUSION

The issue of sexual exploitation and abuse by U.N. peacekeeping personnel has garnered the attention of governments, intergovernmental organizations, non-governmental agencies, and other public interest groups. However, more than a decade after reports of sexual abuse surfaced and several years after the Secretary-General announced the

166. U.S. STATE DEP’T REPORT, *supra* note 63, at 232.

167. July 2006 Press Release, *supra* note 150. In their report, titled *Must Boys Be Boys? Ending Sexual Exploitation & Abuse in U.N. Peacekeeping Missions*, Refugees International recommended that: (1) Public Information Directors design educational programs, in tandem with local women’s groups, regarding sexual exploitation and abuse; (2) these programs communicate their findings of exploitation and abuse investigations; (3) the U.N. strengthen confidentiality rules in order to better protect whistle-blowers; and (4) the U.N. create a position related to trafficking in peacekeeping operations. MARTIN, *supra* note 19, at 23–24.

168. *Id.*

169. *Id.*

170. *Id.* at 24.

171. *Id.*

172. *Id.*

173. See generally Role of Microcredit in the Eradication of Poverty, G.A. Res. 52/194, U.N. Doc. A/RES/52/194 (Feb. 18, 1998). The resolution notes that “. . . microcredit programmes have especially benefited women and have resulted in the achievement of their empowerment in a world where more women than men live in absolute poverty and that the imbalance continues to grow.” *Id.*; see also Press Release, The Secretary-General, Message on the Launch of the International Year of Microcredit (Nov. 18, 2004), available at <http://www.un.org/apps/sg/sgstat.asp?nid=1186> (“A small loan, a savings account, an affordable way to send a pay-cheque home, can make all the difference to a poor or low-income family. With access to microfinance, they can earn more, build up assets, and better protect themselves against unexpected set-backs and losses. They can move beyond day-to-day survival towards planning for the future. They can invest in better nutrition, housing, health, and education for their children. In short, they can break the vicious circle of poverty.”).

U.N.'s zero-tolerance policy,<sup>174</sup> the Under-Secretary for Peacekeeping Operations acknowledged that not all troop contingents were fully supportive of the zero-tolerance policy, particularly when it came to prostitution.<sup>175</sup> Prince Zeid stressed that Member States must not view the issue as one of ephemeral or passing importance, but rather, it should be viewed as the serious topic that it is.<sup>176</sup> However, he recognized that it was difficult to change the dismissive culture, which is “within ourselves, in our own countries and in the mission areas.”<sup>177</sup>

Now that some light has been cast on the issue, it is hoped that serious reform will be implemented. In February 2006, John Bolton, U.S. Representative to the U.N. stated:

[S]exual exploitation and abuse of women and children at the hands of U.N. peacekeepers is not an isolated incident—it is a widespread scourge which creates lasting victims, scarred for their lifetimes. The ‘boys will be boys’ attitude, which too long pervaded peacekeeping operations, must correctly be met with a zero-tolerance policy.<sup>178</sup>

On December 14, 2006, the European Parliament adopted a Resolution that “[e]xpressed serious concern over reports of a ‘culture of silence’ in some U.N. missions, stemming from the fear of punishment and retaliation,” and “calls on the UN to take all necessary steps to create a working environment that allows staff to report instances of abuse without fear of retaliation.”<sup>179</sup> The Resolution also emphasized that, “despite

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174. ZEID REPORT, *supra* note 3, ¶ 44. While acknowledging that condoms are routinely distributed, it urges that such distribution of condoms to peacekeepers is misinterpreted. When condoms are distributed to troops, it should be emphasized that it is a strategy to combat transmission of HIV/AIDS and not to encourage prostitution. *Id.*

175. Press Release, U.N. Doc. SC/8649, *supra* note 63, ¶ 3.

176. *Id.* ¶ 4.

177. *Id.*

178. Press Release, United States Mission to the United Nations, Statement by Ambassador John R. Bolton, U.S. Representative to the United Nations, on Sexual Exploitation and Abuse at the Hands of U.N. Peacekeepers: Translating Outrage into Action, in the Security Council U.S. U.N. DOC. 035(06) (Feb. 23, 2006), available at [http://www.usunnewyork.usmission.gov/press\\_releases/20060223\\_035.html](http://www.usunnewyork.usmission.gov/press_releases/20060223_035.html). Bolton continued,

[n]ow that we are aware of this problem, though, it is time to take this recognition and translate it into decisive action without delay. We should do so not just because we recognize the impact of such crimes on the success of a particular Mission, but because it is our moral and ethical responsibility to do as much as possible to prevent the sexual exploitation and abuse of women and children wherever it may exist.

*Id.*

179. European Parliament Resolution on the Involvement of U.N. Forces in Sexual Abuse in Liberia and Haiti, EUR. PARL. DOC. P6 TA-PROV(2006)0606 (2006), available at <http://www.>

current measures and the U.N.'s long-standing 'zero-tolerance' approach, allegations of sexual misconduct persist, [and] that, unless the United Nations can put a stop to this behavior, it will have a detrimental impact on the credibility and moral authority of the institution as a whole."<sup>180</sup> The Resolution recognized that "ultimately, some Member States may reduce the number of their troops at a time when there is a strong need for peacekeeping missions."<sup>181</sup>

While it is extremely unlikely that TCCs will cede jurisdiction over alleged criminal offenders within their military contingents, the U.N.'s position that TCCs alone are responsible for discipline of military peacekeepers, and that it is powerless to intervene, is no longer acceptable. The U.N. could impose sanctions, withdraw contingents, and blacklist states that fail to take action in a legally effective way. While this might result in the loss of troops from some TCCs, this factor must be considered in undertaking peacekeeping operations. Further, it has been suggested that the U.N. itself and the TCCs could be held responsible for violations of international humanitarian law by both civilian and military peacekeepers.<sup>182</sup>

Allegations of sexual abuse have already tarnished both the reputation of the United Nations and the fine and difficult work of U.N. peacekeepers. Reform is called for. The tools and recommendations are available. If the U.N. is truly to live up to its promise, the will of Member States as well as the U.N. itself is crucial. While the issue of sexual abuse has been addressed in numerous Security Council resolutions, U.N. reports, and press accounts, allegations of sexual abuse and official inaction continue to escalate. It is crucial that abuse be eliminated, that perpetrators be punished, and that victims be compensated. At least in this instance, rhetoric must be translated into action, and that, as so often happens, too little, too late, is not repeated.

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[europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2006-0606&language=RO](http://europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2006-0606&language=RO).

180. *Id.*

181. *Id.*

182. In his recent *Hastings Law Journal* article, Jaume Saura concludes that despite the possible narrow applications of the Bulletin, applicable when peacekeepers are engaged in hostilities, humanitarian law is still binding on U.N. operations beyond those listed in the Bulletin on the Observance by U.N. Forces of International Humanitarian Law. Additionally, despite the degree of protection afforded to U.N. troops by the Safety Convention, troops still must comply with the rules of international humanitarian law. Indeed, both the U.N. and the TCC have a duty to respect international humanitarian law. See Jaume Saura, *Lawful Peacekeeping: Applicability of International Humanitarian Law to United Nations Peacekeeping Operations*, 58 HASTINGS L.J. 479, 529–31 (2007).