

# IMPUNITY, PEACEKEEPERS, GENDER AND SEXUAL VIOLENCE IN POST-CONFLICT LANDSCAPES: A CHALLENGE FOR THE INTERNATIONAL HUMAN RIGHTS AGENDA

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## Abstract

The United Nations (UN) is the guardian of international human rights standards. To help protect and promote these standards, the UN developed peacekeeping operations in post-conflict environments. Recently there have been highly publicised reports of gender-based sexual exploitation and abuse committed by peacekeepers during deployment. These cases have revealed systematic failures with the UN and troop contributing countries' (TCC) management and prosecution of these cases, and the violation of victims' human rights. Immunity is an important aspect of UN peacekeeping operations. Peacekeepers are deployed in areas which are politically unstable, and 'where normal institutions of law and order are not functioning.'<sup>2</sup> The UN extended immunity from host state prosecution to peacekeepers 'to protect' UN personnel from 'harassment' during missions, and to protect itself from suit for institutional negligence. International legal experts argue that immunity, and a subsequent 'culture of impunity', has resulted in TCC failing to exercise authority in cases of sexual exploitation and abuse committed by deployed peacekeepers.

This article addresses the current responses of the UN and TCC to allegations of sexual exploitation and abuse committed by peacekeepers during missions. It will examine the extent to which conflict between immunity protections and institutional accountability reflect a larger conflict between the international 'human rights and peace and security functions of UN governance operations.'<sup>3</sup> It will also attempt to reconcile legal and non-legal mechanisms introduced by the UN to deal with impunity, with current and emerging law on immunity and human rights, to identify a possible solution to these problems.<sup>4</sup>

**Keywords:** international human rights; peacekeepers and peacekeeping operations; sexual exploitation; sexual abuse; immunity, gender justice

## Introduction

Since the creation of the UN, it has been involved in establishing international human rights standards, with a focus on 'preventing and stopping conflicts.'<sup>5</sup> Peacekeeping operations were introduced to help realise these objectives and preserve international peace and security. They were designed 'to create space for mediators' to identify 'a political solution

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<sup>2</sup> Frederick Rawski, 'To Waive or Not to Waive: Immunity and Accountability in UN Peacekeeping Operations', *Connecticut Journal of International Law* (2002-2003), 18 (103), p.104.

<sup>3</sup> *Ibid.*, p.105.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Human Rights and Peacekeeping*, (Peace Operations Training Institute, University for Peace, 2012), p.16 [http://cdn.peaceopstraining.org/course\\_promos/human\\_rights\\_2/human\\_rights\\_2\\_english.pdf](http://cdn.peaceopstraining.org/course_promos/human_rights_2/human_rights_2_english.pdf), (accessed 25 June 2015).

[and] address the underlying causes' of conflict, in the interests of preserving those human rights globally.<sup>6</sup> Traditional UN peacekeeping missions were limited in their scope and strategic planning.<sup>7</sup> Consequently, immunity granted to UN peacekeeping personnel was not envisioned to be problematic. This article will investigate the development of UN peacekeeping missions and explore how they have evolved in order to contextualise the impact of impunity on the human rights of victims of sexual exploitation and abuse.

The UN Charter's preamble asks Member States to 'save succeeding generations from the scourge of war'.<sup>8</sup> In support of this, the UN adopted an intervention strategy. This involved the deployment of soldiers from TCC by the UN to post-conflict environments, to 'help maintain or restore peace and security' in the affected territories.<sup>9</sup> The aim was 'to reaffirm faith in fundamental human rights' in such conflict situations, and to establish an environment where 'justice and respect for the obligations arising from treaties and other sources of international law can be maintained' in post-conflict landscapes. This would serve to 'promote social progress and better standards of life in larger freedom' in such afflicted territories.<sup>10</sup> The two main functions of the UN thus became inextricably linked: 'Maintaining peace and security and respecting human rights.'<sup>11</sup> The goal of peacekeeping missions 'should be to measurably increase respect for human rights law.'<sup>12</sup> In the context of UN peacekeeping, the protection of civilians in post-conflict environments, and the ability of victims of war crimes to seek justice, is a core aspect of human rights. Peacekeepers have been allocated the responsibility for enabling this justice process to happen. However, questions are being raised regarding the conduct of peacekeepers during operations, particularly in relation to sexual exploitation and abuse, and the human rights of women and girls. This brings a gender dimension which was not originally considered when the concept

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<sup>6</sup> Muna Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions', *Berkley Journal of International Law*, (2009), 27(1), p.129.

<sup>7</sup> The overall evolution of UN peacekeeping operations can be chartered from 'observer missions to robust operations'. The development of these missions has not been clearly framed in international law or 'strategically formulated'. Historically, UN peacekeeping has evolved from 'ad-hoc responses, driven by the demands of the international political situations and realities, and the situations on the ground.' Scott P. Sheeran, 'Briefing Paper: Contemporary Issues in Peacekeeping and International Law', *Institute for Democracy & Conflict Resolution*, (2011), pp.2-3; David Bakradze, 'Analysis of the Different Models of Peace Support Operations and Forms of NATO Involvement, as a Part of a New Security Architecture', *NATO-EAPC Research Fellowship*, (2001), p.39, <http://www.nato.int/acad/fellow/99-01/bakradze.pdf>, (accesses 27 June 2015).

<sup>8</sup> Charter of the United Nations, Preamble, <http://www.un.org/en/documents/charter/preamble.shtml> (accessed 26 June 2015); *Human Rights and Peacekeeping*, p.15.

<sup>9</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.128.

<sup>10</sup> Charter of the United Nations, Preamble; *Human Rights and Peacekeeping*, p.15.

<sup>11</sup> Ibid.

<sup>12</sup> Todd Howland, 'Peacekeeping and Conformity with Human Rights Law', in Ray Murphy and Katarina Mansson, (eds.), *Peace Operations and Human Rights*, (New York, Routledge, 2008), p.6.

of peacekeeping operations emerged within the UN. While a more gender-aware perspective is now part of UN thinking, the issue remains whether it has done enough to address the wider international human rights abuses committed by deployed peacekeepers. Despite the introduction of Conventions such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)<sup>13</sup> and UNSCR 1325,<sup>14</sup> the UN continues to be perceived as being negatively gendered. Focussing on the sexual exploitation and abuse committed by UN peacekeepers during operations this article examines how far the objectives of achieving a gender-balance in the justice process has emerged post-CEDAW and UNSCR 1325, and explores impunity as a gendered phenomenon in peacekeeping and its wider impact on international human rights standards. It also questions whether, in the interest of promoting human rights standards, impunity granted to soldiers from TCC should be revisited given the practical realities of peacekeeping.

## 1 The Basic UN Legal Framework for Peacekeeper Deployment

Currently, UN personnel remain immune from host state prosecution for any criminal offences committed during a mission.<sup>15</sup> Immunity is granted to international bodies to 'protect them against the unilateral interference' from the host state's government where they are deployed.<sup>16</sup> To ensure military contingents on-loan from TCC are held accountable for their conduct, they are subject to the 'exclusive jurisdiction' of their respective nation-states.<sup>17</sup> The 1990 Model Status of Forces Agreement (SOFA) states in Article 46: all UN peacekeeping personnel 'are immune from legal process in respect to acts that they perform in their official capacity.' Article 47(b) stipulates that if the alleged offender is a member of the military, they 'shall be subject to the exclusive jurisdiction of their respective participating states in respect

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<sup>13</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, (18 December 1979) United Nations, Treaty Series, vol.1249, p.13, <http://www.refworld.org/docid/3ae6b3970.html>, (accessed 22 July 2015).

<sup>14</sup> UN Security Council, *Security Council resolution 1325 (2000) [on women and peace and security]* (31 October 2000), [S/RES/1325 (2000)], <http://www.refworld.org/docid/3b00f4672e.html>, (accessed 22 July 2015).

<sup>15</sup> Prior to the deployment of a UN peacekeeping operation, a SOFA is established with the host country. These agreements often provide immunities for the peacekeepers' conduct within the host state. An agreement will often stipulate that peacekeepers are subject to the criminal jurisdiction of their nation-state, not 'the jurisdiction of the host country or that of the operational commanders.' The Secretary-General can waive this agreement, but that rarely happens. See Defeis, 'UN Peacekeepers and Sexual Abuse and Exploitation', p.192; Richard J. Wilson and Emily Singer Hurvitz, 'Human Rights Violations by Peacekeeping Forces in Somalia', *Human Rights Brief*, (2014) 21(2), p.3.

<sup>16</sup> Ombudsperson Institution (Kosovo), Special Report No.1 on the compatibility with international standards of UN Interim Administration Mission in Kosovo (UNMIK) Regulation no.2000/47 on the privileges, immunities and status of NATO led Kosovo Force (KFOR) and UNMIK and their personnel in Kosovo (2000), and on the implementation on regulation 23 (2001); Rawski, 'To Waive or Not to Waive', pp.104-105.

<sup>17</sup> Defeis, 'UN Peacekeepers and Sexual Abuse and Exploitation', p.192.

of any criminal offences which may be committed by them in [the host country or territory].<sup>18</sup> While these provisions are relatively clear, the laws prevailing peacekeeping operations are complex, involving: international and domestic norms interaction; issues of UN immunities and privileges; extraterritorial jurisdiction; and interaction between international human rights law, humanitarian law and domestic or international criminal liability.<sup>19</sup> This complicated legal framework has, in practice, had a negative impact on both state responsibility for human rights violations and individual accountability for crimes [including sexual exploitation and abuse] committed by peacekeepers during missions. Whilst the UN has attempted to sustain better discipline of its male-dominated peacekeeping contingents, success in this area remains uneven at best, but more often non-existent. This challenges the human rights of victims of sexual exploitation and abuse, and the wider level of human rights available to women in post-conflict situations.<sup>20</sup>

Lack of access to justice and protection for victims is a serious hindrance to the emergence of any stable post-conflict society.<sup>21</sup> Ensuring that criminal proceedings against perpetrators are successfully pursued without danger to victims is a key human rights objective of UN peacekeeping. The UN has been criticised for systematically failing to secure gender justice in cases involving sexual exploitation and abuse.<sup>22</sup> Addressing these charges more generally, the 2005 Zeid Report concluded that peacekeeping operations have 'neither the resources nor the mandate to provide comprehensive assistance to victims'.<sup>23</sup> Support needed by victims requires interference with local culture and communities. This goes

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<sup>18</sup> UN Secretary-General, Comprehensive Review of the Whole Question of Peace-Keeping Operations in All Their Aspects: Model Status-of-Forces Agreement for Peace-Keeping Operations, Report of the Secretary-General, 46, 47(b), UN doc. [A/45/594], (October 9, 1990), <http://www.ilsa.org/jessup/jessup09/basicmats/UNsofa.pdf>, (accessed 21 July 2015); Wilson et. al., 'Human Rights Violations by Peacekeeping Forces in Somalia', pp.2-3.

<sup>19</sup> Ibid, p.3.

<sup>20</sup> Defeis, 'UN Peacekeepers and Sexual Abuse and Exploitation', p.192.

<sup>21</sup> Wilson et. al., 'Human Rights Violations by Peacekeeping Forces in Somalia', p.4.

<sup>22</sup> Spees defines 'gender justice' as: 'The protection and promotion of civil, political, economic and social rights on the basis of gender equality. It necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for women, men, girls and boys and adopting gender sensitive strategies for protecting and promoting them'. Pam Spees, 'Gender Justice and Accountability in Peace Support Operations', *International Alert*, (2004), p.9, [http://www.internationalalert.org/sites/default/files/publications/gender\\_justice\\_and\\_accounta.pdf](http://www.internationalalert.org/sites/default/files/publications/gender_justice_and_accounta.pdf), (accessed 1 July 2015); Karen Barnes Robinson, Sue Unsworth, Stephan Massing and Diane Koester, *Conflict and Fragility. Gender and State-building in Fragile and Conflict-affected States*, (OECD Publishing, 2013).

<sup>23</sup> Zeid Report [A/59/710] <https://cdu.unlb.org/Portals/0/Documents/KeyDoc5.pdf>, (accessed 26 June 2015).

beyond the remit for UN peacekeeping missions; they are intended to secure peace and security, not to distort local political, legal and cultural structures.<sup>24</sup>

Securing responsibility for sexual and gender-based violence is a high-profile aspect of gender justice in post-conflict territories.<sup>25</sup> A major obstacle to achieving this has been that many countries fail to either legislatively prohibit sexual and gendered violence, or address these crimes with the urgency required. Even in countries where these acts are prohibited, authorities are often complicit in perpetrating and/or perpetuating these crimes. Consequently, implementation and enforcement of such gender protections are frequently absent or are biased towards the perpetrator. In other countries, the victims are held culpable and so, legally responsible, for the acts perpetrated against them.<sup>26</sup>

Attempting to address these issues, UNSCR 1325 was introduced in 2000. It established the 'importance of mainstreaming gender perspectives into all aspects of peacebuilding.'<sup>27</sup> Improving access to gender justice was central to the Resolution's implementation. Later in 2004, the Secretary-General's report, *The rule of law and transitional justice in conflict and post-conflict societies*, agreed that women needed to be 'included in all initiatives which seek redress for past violations'.<sup>28</sup> Intervention had to be careful to not 'revictimize' marginalised and vulnerable groups, which has particularly meant women and girls who have experienced sexual violence.<sup>29</sup> Despite these developments progress in securing gender-balance and gender justice in peacekeeping operations has been inconsistent. A UN Development Fund for Women (UNIFEM) study on UNSCR 1325 pointed out that women are rarely consulted about the 'form, scope and modalities for seeking accountability.' Women's involvement in

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<sup>24</sup> In response to the civil unrest which broke in Bosnia, the UN widened the mandate of the UN Protection Force (UNPROFOR) 'to monitor the peaceful secession of Bosnia from the former Yugoslavia'. Despite this, the UN maintained that 'the structural integrity of the country' preserved. Philip Jund, 'Intelligence in Peacekeeping Operations', MA Dissertation, Hawai'i Pacific University, 2009, p.18.

<sup>25</sup> Spees, 'Gender Justice and Accountability in Peace Support Operations', p.11.

<sup>26</sup> Sarah Douglas, *Gender Equality and Justice Programming: Equitable Access to Justice for Women*, (United Nations Development Programme, 2007), p.14.

<sup>27</sup> UNSCR 1325, the gender-balance and mainstreaming policy, and the UN Charter's principle of non-discrimination, require peacekeeping operatives to 'plan and implement strategies to ensure the protection and promotion of human rights'. These strategies and plans must also take into consideration 'the different situations women face' in conflict and post-conflict environments. This includes ensuring that women have equal access to (among others) 'justice mechanisms and means of political participation.' Spees, 'Gender Justice and Accountability in Peace Support Operations', p.11.

<sup>28</sup> UN Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General*, (23 August 2004),[S/2004/616]  
<http://www.refworld.org/docid/45069c434.html>,(accessed 22 July 2015).

<sup>29</sup> For more on this see Nahla Valji, 'Gender Justice and Reconciliation', in Kai Ambos, Judith Large and Marieke Wierda, (eds.), *Building a Future on Peace and Justice: Studies on Transitional Justice*, (Springer Science & Business Media, 2008), p.221.

these processes has subsequently 'been minimized or denied and, in most cases, crimes against them go unrecorded'. This amounts to a culture of impunity.<sup>30</sup>

Part of the issue is that the majority of troops seconded to peacekeeping duties are male. Gender experts argue that the hypermasculine and male-dominated cultural and practical environment which society and peacekeeping missions operate in has resulted in a tolerance being expressed towards sexual exploitation and abuse, and a subsequent tradition of silence.<sup>31</sup> Elizabeth Defeis argues that in traditionally male-dominated institutions, such as law enforcement agencies and the military, bonds are forged which shield members from accusations made by those who are outsiders to these institutions. To protect peacekeepers and maintain discipline, such charges are often ignored.<sup>32</sup> What does this suggest about the effectiveness of UN campaigns to advance international human rights, if its peacekeeping mission *mores* are compromised by the cultural masculinities which they are dedicated to eradicating?

### **UN Peacekeeping: Current Reality**

Incidents of sexual exploitation and abuse perpetrated by peacekeepers during deployment were initially tolerated in traditional peacekeeping operations; it was not considered by the UN as a serious challenge to international human rights standards. Recent changes in the management and prosecution of war crimes, including the recognition of rape as a war crime, by the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the Former Yugoslavia (ICTY), transformed the landscape. This enhanced opportunities for uncovering and managing sexual offences committed by peacekeepers during operations.<sup>33</sup> In 1994, the issue assumed a higher public profile. Media agencies reported incidents of sexual exploitation and abuse committed by peacekeepers in the United Nations Transitional Authority in Cambodia (UNTAC), and by UN forces in Somalia. Significantly, these reports charged the UN with failing to both manage these cases and maintain the victims' human rights.<sup>34</sup> Responding to these claims, the Special

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<sup>30</sup> Ibid, p.223.

<sup>31</sup> The majority of personnel in peacekeeping missions are men. In April 2015, of the 94,620 UN peacekeeping military personnel, only 2,762 were women. See, <http://www.un.org/en/peacekeeping/resources/statistics/gender.shtml>, (accessed 26 June 2015); Carol Allais, 'Sexual Exploitation and Abuse by UN Peacekeepers: The Psychological Context of Behaviour Change', *Scientia Militaria, South African Journal of Military Studies*, (2011), 39(1), p.3.

<sup>32</sup> Defeis, 'UN Peacekeepers and Sexual Abuse and Exploitation', p.192; Carol Harrington, *Politicization of Sexual Violence: From Abolitionism to Peacekeeping*, (Ashgate, 2013), p.145.

<sup>33</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.141.

<sup>34</sup> The Italian government investigated reports of sexual abuses committed against Somalian girls by Italian deployed troops; *The Guardian*, (19 February 1994). See Christine Chinkin, 'Rape and Sexual Abuse of Women in International Law', *European Journal of International Law*, (1994), p.326.

Representative of the UN Secretary-General in Cambodia, Yasushi Akashi, stated, 'boys will be boys'.<sup>35</sup> These reports damaged the reputation of the UN; it was viewed as part of the problem, rather than the solution.<sup>36</sup> Since the late 1990s, the UN, through its Office of the Secretary-General and Department of Peacekeeping Operations, made significant efforts to remedy the situation. In 1999, the UN Secretary-General's Bulletin made certain areas of humanitarian law applicable to UN peacekeeping contingents engaged in peace enforcement actions, or in missions where 'use of force is permitted in self-defense'.<sup>37</sup> It stated that 'women should be especially protected against any form of sexual assault'. The Bulletin also prohibited 'rape, enforced prostitution; any form of sexual assault' and enslavement (along with other violations).<sup>38</sup>

Following release of the Bulletin, the UN prioritised identifying the scale of the problem. In 2001, reports commissioned by the United Nations High Commission for Refugees (UNHCR) and Save the Children UK established that aid workers had systematically sexually abused 'refugee communities in Guinea, Liberia, and Sierra Leone.' While a later investigation conducted by the UN Office of Internal Oversight Services (OIOS) could not confirm specific cases, it did establish that the conditions in the camps exposed refugees to risk of such offences.<sup>39</sup> In response, the UN General Assembly introduced Resolution 57/306. The Resolution aimed to investigate incidents involving sexual exploitation and abuse of refugees perpetrated by humanitarian aid workers and peacekeeping personnel in West Africa.<sup>40</sup> The 2003 report which followed established that 24 such incidents had been reported to the Department of Peacekeeping Operations.<sup>41</sup> Later that year, the Secretary-General's Bulletin, *Special measures for protection from sexual exploitation and sexual abuse*, was introduced. This established the need for special measures and announced a zero-tolerance policy for sexual exploitation and abuse.<sup>42</sup> Following its introduction, the number of cases reported to the Department of Peacekeeping Operations increased

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<sup>35</sup> Gabrielle Simm, *Sex in Peace Operations* (Cambridge University Press, 2013) p.24.

<sup>36</sup> *Ibid*, p.177.

<sup>37</sup> UN Secretary-General, *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, (6 August 1999),[ST/SGB/1999/13] <http://www.refworld.org/docid/451bb5724.html>,(accessed 22 July 2015); Spees, 'Gender Justice and Accountability in Peace Support Operations', p.21.

<sup>38</sup> Secretary-General's Bulletin [ST/SGB/1999/13], at para.7.2.

<sup>39</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.141.

<sup>40</sup> UN General Assembly, *Investigation into sexual exploitation of refugees by aid workers in West Africa: Resolution adopted by the General Assembly*, (22 May 2003),[A/RES/57/306], <http://www.refworld.org/docid/3f45e4f40.html>,(accessed 22 July 2015).

<sup>41</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.141.

<sup>42</sup> UN Secretary-General, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, (9 October 2003),[ST/SGB/2003/13], <http://www.refworld.org/docid/451bb6764.html>,(accessed 22 July 2015); Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, p.29.

dramatically.<sup>43</sup> In 2004, after extensive media reports, enquiries were conducted by the OIOS and Human Rights Watch, respectively. Both bodies established that sexual exploitation and abuse had been committed by peacekeepers against women and children during the UN Organization Mission in the Democratic Republic of the Congo (MONUC). In response, in the Secretary-General's 2004 Annual Report 121 allegations were reported. In 2005, 340 cases had been reported, and by 2006, 357 allegations had been made. Recently, the number of reports of sexual exploitation and abuse has declined.<sup>44</sup> In 2014, 51 such charges were made against UN peacekeepers - 'the lowest since measures for protection' were introduced.<sup>45</sup>

The decline in such reports has been credited to a number of factors. In 2005, the Secretary-General released the Zeid Report, which supposedly provided 'A comprehensive strategy to eliminate future sexual exploitation and abuse' in UN peacekeeping missions.<sup>46</sup> The Report proposed alterations in the 'ad hoc' measures relied on to manage allegations. It also suggested solutions ranging from on-site courts martial to financial sanctions and the creation of a 'permanent investigative body.'<sup>47</sup> Given the UN statement that reports of sexual exploitation and abuse are now being managed more effectively, it clearly considers that it has successfully implemented the Zeid Report's key recommendations. The UN announced that:

Dedicated conduct and discipline personnel deployed in field missions continue to support each field mission with the implementation of the United Nations three-pronged strategy to address sexual exploitation and abuse through prevention, enforcement and remedial actions.<sup>48</sup>

The question remains, how far these preventative strategies, awareness campaigns, and changes to the legal framework have genuinely achieved a significant shift in attitudes and practices amongst peacekeepers.<sup>49</sup>

The UN has claimed that as a result of these measures, both its personnel and host nation populations are increasingly aware of UN standards of conduct, and have a firmer understanding of protocol. This has meant that complaints received by either body are being

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<sup>43</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', pp.142-3.

<sup>44</sup> Ibid, p.142.

<sup>45</sup> Joe Sandler Clarke, 'Sex abuse poses "significant risk" to UN peacekeeping, says leaked report', *The Guardian* (24 March 2015).

<sup>46</sup> Zeid Report [A/59/710].

<sup>47</sup> Hunter, 'Should we Prosecute the Protectors?' p.17.

<sup>48</sup> Sandler Clarke, 'Sex abuse poses "significant risk" to UN peacekeeping'.

<sup>49</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.142.



dealt with more efficiently and in accordance with UN regulations.<sup>50</sup> Consequently, the issue of impunity is being addressed, and human rights access has been substantially advanced in these cases.

Linked to the decline in reported incidents, this seems to amount to an increasingly successful management of the problem by the UN.<sup>51</sup> On closer examination, the reality is less positive. In March 2015, the UN was accused of ignoring an internal report, which described sexual exploitation and abuse as still being the most significant risk in UN peacekeeping operations.<sup>52</sup> The report suggests that the number of cases reported could be far greater, due to issues including underreporting, poor record-keeping<sup>53</sup> and the 'lack of confidence' in the reporting process.<sup>54</sup> However, a recent report suggests that there is a more serious ongoing problem. In April 2015, leaked confidential documents revealed that not only had the UN failed to stop the sexual exploitation and abuse of children in the Central African Republic by peacekeepers, but that it had suppressed reports detailing such abuse.<sup>55</sup> This challenges UN assurances that where sexual exploitation and abuse are still occurring and it is not intervening, it is because the organisation is unaware of these reports.<sup>56</sup> Instead, it strongly suggests that the culture of impunity prevails, and that gender-balanced access to justice and human rights is not being adequately maintained.

## 2 Impunity

### *The UN and Peacekeeping Operations*

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<sup>50</sup> Ibid, p.143.

<sup>51</sup> UN General Assembly, *Special measures for protection from sexual exploitation and sexual abuse : Report of the Secretary-General*, (13 February 2015), [A/69/779], <http://www.refworld.org/docid/5506924c4.html>, (accessed 22 July 2015).

<sup>52</sup> The Secretary-General commissioned the report 'to monitor abuse in peacekeeping missions. It is an internal document, circulated within the UN, which was leaked to AIDS-Free World, an NGO advocating an urgent response to HIV and Aids.' The document analysed UN peacekeeping operations in Congo, Haiti, Liberia and South Sudan, where 85% of sexual exploitation and abuse allegations against peacekeepers originates. See, Sandler Clarke, 'Sex abuse poses "significant risk" to UN peacekeeping'.

<sup>53</sup> There are wider issues regarding the accuracy of such figures. For instance, victims of sexual exploitation and abuse often feel 'frightened and intimidated at the prospect of being confronted by investigators'. As a result, victims fail to report abuse. This contributes to the underreporting of such crimes. There is also evidence of the UN suppressing reports of sexual exploitation and abuse committed by peacekeepers during deployment. Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.143; Sandler Clarke, 'Sex abuse poses "significant risk" to UN peacekeeping'.

<sup>54</sup> Lyndal Rowlands, 'Contradictions beset U.N. response to sexual abuse by peacekeepers', *Inter Press Service News Agency*, (16 March 2015), <http://www.ipsnews.net/2015/03/contradictions-beset-u-n-response-to-sexual-abuse-by-peacekeepers/>, (accessed 4 June 2015).

<sup>55</sup> Sandra Laville, 'UN Aid Worker Suspended for Leaking Report on Child Abuse by French Troops' *The Guardian*, (29 April 2015).

<sup>56</sup> Rowlands, 'Contradictions beset U.N. response to sexual abuse by peacekeepers'.

The UN currently has immunity from the jurisdiction of national courts. While this has begun to be challenged more generally in those courts, a successful challenge has yet to be launched against UN peacekeepers.<sup>57</sup> The UN claims that a revision of peacekeeper immunity from prosecution in national courts is not required, because it has instituted its own mechanisms for dealing with alleged offences.<sup>58</sup> These claims are undermined by recent reports, which continue to highlight systemic (and systematic) failures with the reporting mechanisms and management of these offences. This has resulted in the perception that peacekeeping personnel are not accountable for their conduct and that there is 'a *de facto* tolerance for and immunity from prosecution' for such behaviour.<sup>59</sup> This perception has had wider implications for human rights being secured for victims of sexual exploitation and abuse; the UN is seen as unwilling, in terms of its internal culture, to address the issues contextualising the appropriate management of such charges.

Whilst a number of reports have been commissioned by the UN to identify the extent of the problem, little has been done to analyse the problem associated with impunity.<sup>60</sup> For instance, the UN-commissioned Zeid Report failed to examine whether the criminal actions of peacekeepers during deployment should come under the legal authority of the UN, or if they should remain under the national jurisdiction of their respective TCC. It also avoided any relevant conclusions. The investigative mechanisms employed by the UN to measure the number of cases and correlate these findings with the issue of impunity, has also been questioned.<sup>61</sup> This has resulted in the failure of securing accurate and informative statistics, which could quantify the scale of the problem.

In the 2014 Annual Report by the UN Secretary-General, Ban Ki Moon acknowledged that 'much remains to be done to enhance the organization's response to sexual exploitation and abuse.'<sup>62</sup> The UN's commitment to this objective has been challenged. In March 2015, the international advocacy organisation, AIDS-Free World, leaked news that the UN had suppressed a report that it had commissioned. The report provided substantial evidence of incidents of ongoing sexual exploitation and abuse committed by deployed peacekeepers in

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<sup>57</sup> Rosa Freedman, 'UN Immunity or Impunity? A Human Rights Based Challenge', *European Journal of International Law*, (2014), 25(1), p.241.

<sup>58</sup> There is a counterbalance to UN immunity: 'section 29 of the Convention on Privileges and Immunities of the UN requires the Organization to resolve any private law claims through alternative dispute resolution mechanisms.' *Ibid*, pp.239, 241.

<sup>59</sup> Ray Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice*, (Cambridge, 2007), p.231.

<sup>60</sup> Hunter, 'Should we Prosecute the Protectors?' p.17.

<sup>61</sup> *Ibid*.

<sup>62</sup> *Special measures for protection from sexual exploitation and sexual abuse : Report of the Secretary-General [A/69/779]*.

Africa.<sup>63</sup> Paula Donovan, the organisation's co-director, argues that the findings of the report indicate that the UN is still failing to tackle the issue of impunity. The Secretary-General's 2014 Report used 'inadequate and incomplete reporting mechanisms', which fail to take into account the continuing culture of impunity among UN peacekeepers.<sup>64</sup> These findings challenge the Secretary-General's assertion that 'the UN had a zero-tolerance policy towards' sexual exploitation and abuse.<sup>65</sup> Rosa Freedman points out that, 'there are clear contradictions between what the experts set out in their research and what Ban Ki-moon would like to present as factual' in his annual report to members.<sup>66</sup> Why does this issue remain problematic for the UN?

### ***Historical Context of the Culture of Silence and Impunity***

Rape and sexual violence in conflict/post-conflict situations is not a modern phenomenon.<sup>67</sup> However, it was not until rape was established as a war crime by the ICTR and ICTY that this dimension to peacekeeping became problematized; it challenged the UN's ability to uphold human rights for victims of sexual exploitation and abuse, and undermined the UN's authority for maintaining international human rights standards.<sup>68</sup> During World War II, sexual violence against civilian women and children was a common occurrence, and featured in the subsequent war crimes proceedings of Nuremberg and Tokyo.<sup>69</sup> Despite this, both tribunals failed to sufficiently address and prosecute these offences. This suggests a long-standing historical culture in international criminal law and human rights law, which fails to acknowledge acts of sexual violence as serious crimes. This has diminished the status of war crimes perpetrated against women and their ability to access justice in the international courts. It has also resulted in limited attention being given to victims of sexual violence in

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<sup>63</sup> The leaking of the report was used as part of its wider Code Blue campaign (launched in May 2015) to end impunity for such 'peacekeepers'. Their website reveals their reasoning, linked to the prevalence of AIDS amongst survivors of sexual exploitation and abuse. See, <http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/Code-Blue-Launch.aspx>, (accessed 26 June 2015).

<sup>64</sup> The March 2015 leakage of the suppressed UN report highlighted that 'UN personnel in all the missions we visited could point to numerous suspected or quite visible cases' of sexual exploitation and abuse which 'are not being counted or investigated'. Rowlands, 'Contradictions beset U.N. response to sexual abuse by peacekeepers'.

<sup>65</sup> Sandler Clarke, 'Sex abuse poses "significant risk" to UN peacekeeping'.

<sup>66</sup> Ibid.

<sup>67</sup> Andrew Haywood, *Global Politics*, (Palgrave, 2014), p.431; Anne-Marie de Brouwer, 'Supranational Criminal Prosecution of Sexual Violence', in Jackie Jones, Anna Grear, Rachel Fenton, Kim Stevenson (eds.), *Gender, Sexualities and Law*, (Routledge, 2011), p.201.

<sup>68</sup> Sonja C. Grover, *The Torture of Children During Armed Conflicts: The ICC's Failure to Prosecute and the Negations of Children's Human Dignity*, (Springer Science & Business Media, 2014), p.204; Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.133.

<sup>69</sup> Nicola Henry, *War and Rape: Law, Memory and Justice*, (Routledge, 2011) ch.3.

armed conflict and post-conflict environments indicating not only that priority is still given to male human rights, but that human rights in post-conflict situations remain gendered.<sup>70</sup>

The lack of attention given to, and silence surrounding crimes involving the sexual exploitation and abuse of women, is entrenched in the politics of wartime rape and the way rape is used by all parties in armed conflict.<sup>71</sup> This helps explain the lack of will to prosecute sexual violence in war crimes proceedings.<sup>72</sup> In other words, for reasons associated with the protection of masculine military cultures on all sides, female human rights are regarded as less significant. Evidence suggests that a culture of silence continues to be reflected in the UN management of sexual exploitation and abuse committed by peacekeepers.<sup>73</sup> This is partly because military make-up is typically predominantly male.<sup>74</sup> There is also concern over the extent to which a masculine culture within the UN itself continues to affect its will to deal with this problem transparently.

### 3 Combating Impunity in Peacekeeping Operations: A Gender-Balanced Approach

Post-1945, efforts have been made by the UN through various initiatives and resolutions to counter gender inequality, and sexual and gender-based violence. International human rights treaties have been introduced which have prohibited rape, human trafficking and commercial prostitution.<sup>75</sup> Where rape has not been explicitly addressed, it is recognised as a violation of other human rights' instruments, including the 'prohibition of torture and other cruel, inhumane or degrading treatment'.<sup>76</sup> Moreover, CEDAW states that all state parties must 'suppress all forms of traffic in women and exploitation of prostitution of women'.<sup>77</sup> As pointed out by the sponsoring Committee, sexual exploitation and abuse is also prohibited

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<sup>70</sup> Ibid, p.29.

<sup>71</sup> Whilst sexual violence was employed by the Central Powers, Allied troops and civilians sexually violated women also. Henry, *War and Rape*, p.29; Anne Marie de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and ICTR*, (Intersentia, 2005), p.7. See also de Brouwer, 'Supranational Criminal Prosecutions' for a later development of these concepts.

<sup>72</sup> de Brouwer, *Supranational Criminal Prosecution of Sexual Violence*, pp.7-8.

<sup>73</sup> Paula Donovan and Stephen Lewis, Open Letter to Ambassadors of All United Nations Member States, (16 March 2015), available at, <http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/Open-Letter-to-UN-Missions.aspx>, (accessed 26 June 2015).

<sup>74</sup> Allais, 'Sexual Exploitation and Abuse by UN Peacekeepers', p.3.

<sup>75</sup> Roisin Burke 'Shaming the State: Sexual Offences by UN Military Peacekeepers and Rhetoric of Zero Tolerance', in Gina Heathcote and Dianne Otto, *Rethinking Peacekeeping, Gender Equality and Collective Security*, (Palgrave Macmillan) <http://www.palgrave.com/page/detail/rethinking-peacekeeping-gender-equality-and-collective-security-gina-heathcote/?isb=9781137400208>, (accessed 26 June 2015).

<sup>76</sup> Where women are systematically raped or subjected to 'enforced prostitution', this can constitute sexual enslavement. Ibid.

<sup>77</sup> CEDAW, Article 6.

under acts which 'inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.'<sup>78</sup> Regarding peacebuilding and peacekeeping, the UN has extended initiatives by introducing a number of policies and legislation to achieve gender equality, and gender mainstreaming in Security Council mandates for peace support operations.<sup>79</sup> The establishment of UNSCR 1325 explicitly recognised the role of women in the maintenance of peace and security.<sup>80</sup> Notably, it called for 'an end to impunity and the prosecution of those responsible for crimes related to sexual and other violence against women and girls.'<sup>81</sup> In 2008, UNSCR 1820 was introduced, which focused on sexual violence in armed conflict and post-conflict situations.<sup>82</sup> In contrast, UNSCR 1888 and UNSCR 1889 (passed 2009) envisaged 'a wider range of roles for women in conflict than as victims'.<sup>83</sup> These Resolutions also instituted monitoring and accountability mechanisms, including the appointment of the Special Representative on sexual violence in armed conflict. UNSCR 1888, more specifically, required the Secretary-General to continue to 'strengthen efforts to implement the zero tolerance policy in UN peacekeeping operations.'<sup>84</sup>

It is now agreed at the highest international levels that the sexual exploitation and abuse committed by peacekeeping personnel during deployment amounts to human rights violations.<sup>85</sup> This is the theory. Practically, disciplining alleged perpetrators has remained problematic. UNSCR 1325 is not a binding decision and there are no monitoring mechanisms in place to ensure that it is complied with.<sup>86</sup> Arguably, had its spirit and letter been fulfilled, the additional Resolutions would not have been considered necessary by the UN.<sup>87</sup> At the 2014 End Sexual Violence in Conflict Global Summit, a mock criminal trial of UNSCR 1325 was held. Anne-Marie Goetz concluded that though it was to be seen as a failure, it was not necessarily because of the terms outlined in the resolution; it is the UN's

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<sup>78</sup> Burke 'Shaming the State'.

<sup>79</sup> Simm, *Sex in Peace Operations*, p.37.

<sup>80</sup> *Ibid.*

<sup>81</sup> Dyan Mazurana, Angela Raven-Roberts and Jane Parpart, 'Introduction: Gender, Conflict, and Peacekeeping', in same eds, *Gender, Conflict, and Peacekeeping*, (Rowan and Littlefield, 2005), p.16

<sup>82</sup> UN Security Council, *Security Council resolution 1820 (2008) [on acts of sexual violence against civilians in armed conflicts]*, (19 June 2008), [S/RES/1820 (2008)]

<http://www.refworld.org/docid/485bbca72.html>, (accessed 22 July 2015).

<sup>83</sup> UN Security Council, *Security Council resolution 1888 (2009) [on acts of sexual violence against civilians in armed conflicts]*, (30 September 2009), [S/RES/1888 (2009)],

<http://www.refworld.org/docid/4ac9aa152.html>, (accessed 22 July 2015); UN Security Council, *Security Council resolution 1889 (2009) [on women and peace and security]*, (5 October 2009), [S/RES/1889 (2009)],

<http://www.refworld.org/docid/4acdd8512.html>, (accessed 22 July 2015).

<sup>84</sup> Simm, *Sex in Peace Operations*, p.38.

<sup>85</sup> Burke, 'Shaming the State'.

<sup>86</sup> Simm, *Sex in Peace Operations*, p.37.

<sup>87</sup> Burke 'Shaming the State'.

lack of will to realise the standards they advocated.<sup>88</sup> What has the UN done to address such criticism?

### ***UN Response to Sexual Exploitation and Abuse and Impunity***

The UN has introduced legal changes and regulatory mechanisms which claim to address problems associated with 'hypermasculine' culture. It has also implemented a 'zero tolerance policy' to aid it in combating impunity in peacekeeping operations. Arguably, these instruments provide a paradigm of how to use legislation and non-legal regulatory mechanisms together to enhance their overall effectiveness.<sup>89</sup> How does this work in practice? The UN requires TCC to ensure at national, regional or sub-regional levels that their military contingents receive 'pre-deployment training on UN standards of conduct, in addition to mission-specific rules and regulations, and local laws.' Such countries must also arrange for contingent commanders to receive training to maintain troop discipline.<sup>90</sup>

In 2005, Troop Conduct and Discipline Units and the Troop Conduct and Discipline Teams were introduced. The structure is intended to act as a 'repository for misconduct allegations.' Currently, Conduct and Discipline Teams are the first point of contact for reporting allegations of sexual exploitation and abuse committed during peacekeeping missions. Whilst they are not responsible for conducting investigations, these teams examine allegations and determine whether a formal legal investigation is required. They report disciplinary problems and ensure UN Standards of Conduct are correctly interpreted and applied. They also provide advice to the Mission Head on issues such as: complaints and data management; raising local awareness of complaints mechanisms; and provide feedback to victims on the outcome on investigations.<sup>91</sup> The Conduct and Discipline Teams focus on improving training of UN peacekeepers in relation to contextualising issues such as gender-balance and human rights, local cultures and UN standards of conduct.<sup>92</sup> These educational prevention strategies largely rely on 'traditional information-based awareness' platforms such as training seminars and manuals in order to communicate educational information to 'a passive target audience'.<sup>93</sup> They also operate beyond troop training providing awareness campaigns in mission zone territories. Target demographics for these

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<sup>88</sup> Judith Rowbotham and Fiona Tate, 'The Global Summit: End Sexual Violence in Conflict Now', *Law, Crime and History*, (2014), 4(2), p.94.

<sup>89</sup> Simm, *Sex in Peace Operations*, p.176.

<sup>90</sup> Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, p.40.

<sup>91</sup> *Ibid*, p.38.

<sup>92</sup> For example, Conduct and Discipline Teams delivers 'Mandatory in-mission training' on sexual exploitation and abuse, in conjunction with Integrated Mission Training Cells. *Ibid* p.40.

<sup>93</sup> Allais, 'Sexual Exploitation and Abuse by UN Peacekeepers', p.10.

include 'host populations, local government officials, civil society organisations, international organisations and non-governmental organisations.'<sup>94</sup>

These programmes have been strongly criticised. Some have argued that the 'information-based educational programmes [do] not bring about consistent' behaviour change. Even individuals with high levels of prior information and knowledge can participate in high-risk activities and offending behaviours, as the experience of UN peacekeeping operations underline. Psychologists argue that simply 'Asking people to change their behaviour' has little impact. It overlooks 'the broader social context of masculine and feminine identities, which makes the negotiation of behaviour change a complex process.' From this perspective, in order to achieve transformative change, other factors which influence and determine behaviours must be focused on, and 'more innovative attempts to bring about behaviour change' need to be developed.<sup>95</sup>

Others argue that there are more practical considerations which complicate the matter of training. Given the huge range of topics addressed in induction training, 'gender training may not be well retained or understood by' peacekeepers.<sup>96</sup> Lesley Abdela suggests that prior to deployment gender training assessments should be performed on peacekeepers to identify gaps in knowledge and understanding.<sup>97</sup> These assessments could also support the UN standards of conduct in this area.<sup>98</sup> From a human rights perspective, Todd Howland, director of the MONUC human rights division, states:

There should be analysis of the root causes of the conflict and of which human rights are implicated. A baseline study of the level of respect for human rights should be done at the beginning of the operation. Programmes should be put in place to measurably increase the level of respect for the target rights (those linked to the root cause of the conflict).<sup>99</sup>

Extending this further, Gabrielle Simm argues that the relationship between UN policy on gender mainstreaming and UN policy on sex in peace operations, needs to be investigated. However, gender experts are divided. There are those who link the charges against peacekeepers to sexual and gender-based violence in conflict and gender inequality more

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<sup>94</sup> Measures include poster 'campaigns, newsletters, brochures, websites and radio broadcasts.' Ibid, p. 10

<sup>95</sup> Ibid, pp.10-11.

<sup>96</sup> Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, p.40.

<sup>97</sup> Lesley Abdela is a noted post-conflict reconstruction expert. She is regularly employed to undertake gender training and has criticised the lack of emphasis on gender in pre-deployment programmes. Lesley Abdela, (Women's rights and representation expert. British adviser to international governments; non-government organisations; and the European Commission), Burwash, 4 August 2013.

<sup>98</sup> Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, pp.40-1.

<sup>99</sup> Todd Howland, 'Peacekeeping and Conformity with Human Rights Law', p.6.

generally within cultures. Others do not value gender training and believe that combating such behaviour towards women and girls is a discipline and conduct matter for troops. Like Abdela, Ray Murphy connects sexual exploitation and abuse to the 'overall failure of gender mainstreaming in peace operations and a failure acknowledge the rights and interests of women in post-conflict situations in general'. Sarah Martin, on the other hand, asserts that it is 'not strictly a gender issue'; rather it is a 'disciplinary offence [or crime] akin to stealing or assault'. Whilst related, more attention has been given to sex than gender in peacekeeping.<sup>100</sup> If the issue of sexual exploitation and abuse is to be dealt with effectively, gender must be central to any conversation regarding sex in peacekeeping operations.<sup>101</sup> This returns the focus to the UN as an institution and to the leadership displayed by its senior officials.

#### 4 The General-Secretary's Bulletin: Zero Tolerance Policy

As part of the response to charges of inaction over impunity, the 2003 Secretary-General's Bulletin provided definitions of sexual abuse and sexual exploitation, to clarify what constitutes these offences.<sup>102</sup> The Bulletin defined sexual abuse as 'any actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.' Sexual exploitation is defined 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.' A range of conduct is addressed under these definitions, including rape, sex with minors, trafficking, child pornography, the solicitation of prostitutes, and even cases bordering on 'ordinary sexual relationships'.<sup>103</sup> The Bulletin also stated that UN forces have a duty of care towards women and children. Sexual intercourse with any individual under 18 years old is prohibited.<sup>104</sup> Additionally, sexual relations between peacekeepers and 'beneficiaries of assistance' were 'strongly discouraged'.<sup>105</sup> This seems, on initial examination, a genuine attempt to remedy the issue of impunity and protect the human rights of women in post-conflict regions.

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<sup>100</sup> Simm, *Sex in Peace Operations*, p.39.

<sup>101</sup> Ibid, pp.39-40.

<sup>102</sup> Secretary-General's Bulletin [SGB/2003/13]. A number of other UN documents define what constitutes sexual abuse and sexual exploitation. For instance, the MONUC Code of Conduct defines an act of sexual abuse and/or exploitation as (a) any exchange of money, employment, goods or services for sexual intercourse, (b) sexual activity with a person under the age of 18, or (c) other sexual misconduct that has a detrimental effect on the image, credibility, impartiality or integrity of the UN. See Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.146.

<sup>103</sup> Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, p.30.

<sup>104</sup> Unless lawfully married and the person is over the age of majority in their citizenship.

<sup>105</sup> Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, pp.30-1.



The Bulletin has not been universally well-received. Simm argues that, ironically, the continuing problem is located in the gender essentialist standard captured in the UN's zero tolerance policy. This sees the masculinity of soldiers as 'leading inexorably' to the sexual exploitation and abuse of women.<sup>106</sup> The Bulletin 'relies on and perpetuates negative gender stereotypes and imperial hierarchies', which are (potentially) equally deleterious to both men and women. Its core perspective, therefore, reinforces discrimination and stigma. It not only positions women and girls as powerless victims with unequal status to men, but also positions the male peacekeepers as sexual predators. This reinforces the traditional view that male violence is intrinsic to 'normal' masculinity.<sup>107</sup> This relates to the ongoing tension between typical soldiering duties: where violence is associated with the success of a 'normal' military mission and peacekeeping or with the failure of the core objectives of the exercise.<sup>108</sup> As Whitworth has commented, 'All the messages a soldier receives about appropriately soldierly masculine behaviour are fundamentally at odds with what is expected in a peacekeeping operation'.<sup>109</sup> Instead of exploring this issue in a way that engages with this tension and associated gender stereotypes, the Bulletin has effectively confirmed the traditional stereotypes of militarised masculinity.<sup>110</sup> As a result, there is something paradoxical in the way the UN seeks on the one hand to address the culture of impunity in this area, while on the other, maintaining a zero tolerance policy. In practice, the UN's rhetoric confirms that an 'innate male predisposition' to sexual violence exists. This makes it difficult for the UN to acknowledge the possibility that sexual exploitation and abuse committed by deployed peacekeepers might be socially constructed: being political and enabled by institutional, economic, cultural and legal conditions.<sup>111</sup> It also makes it difficult for soldiers employed in peacekeeping missions to address their own behaviour, and those of the men they lead, in ways that can help break down entrenched cultural attitudes associated with masculinity in the military context.<sup>112</sup>

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<sup>106</sup> Simm, *Sex in Peace Operations*, p.176.

<sup>107</sup> Olivera Simic, 'Distinguishing between exploitative and nonexploitative sex involving UN peacekeepers: the wrongs of "zero tolerance"', *NOREF Expert Analysis*, (2013), p.1.

<sup>108</sup> 'Peacekeeping is the result of the contradiction between the rejection of war and the need to keep peace by force'. Patrice Sartre, 'Making UN Peacekeeping More Robust: Protecting the Mission, Persuading the Actors', *International Peace Institute*, (2011), p.2.

<sup>109</sup> Sandra Whitworth, *Men, Militarism and UN Peacekeeping: A Gendered Analysis*, (Lynne Reiner Publishers, 2004), p.16.

<sup>110</sup> Kofi Nsia-Pepira, *UN Robust Peacekeeping. Civilian Protection in Violent Civil Wars*, (Palgrave Macmillan, 2014).

<sup>111</sup> Simm, *Sex in Peace Operations*, p.177.

<sup>112</sup> See, on this, Lee F. Monaghan and Michael Atkinson, *Challenging Myths of Masculinity. Understanding Physical Cultures*, (Ashgate, 2014). For a non-UN inspired attempt to address this issue of negative stereotyping, see 'Message from the Chief of Army, Lieutenant David Morrison to the Australian Army', (13 June 2013), available at, <https://www.youtube.com/watch?v=QaqpoeVgr8U>, (accessed 11 September 2015)

It is, therefore, the definitions of sexual exploitation and sexual abuse, and the underlying assumptions about 'typical' masculine behaviour provided in the Bulletin, which are most problematic. This is both in terms of the explicit comments and the implicit associations with peacekeeping and masculinity. For example, the Bulletin failed to define what is meant by 'beneficiaries of assistance'.<sup>113</sup> Equally, not all conduct prohibited under these definitions constitutes a violation under international or national law.<sup>114</sup> This not only makes implementing the rules problematic, but also makes it difficult to address the underpinning masculine cultures associated with impunity. Burke highlights that there are also a number of issues with the overly sweeping definition of sexual exploitation. Its all-inclusive remit allows little room for distinguishing between ordinary fraternizing with locals, which might include the commercial transaction of soliciting prostitutes, and other sexual offences, including rape, forced prostitution and sex with minors. A failure to differentiate between commercial prostitution and acts such as rape can potentially trivialise the latter type of offending, particularly in the eyes of deployed peacekeepers.<sup>115</sup>

Inevitably, there are complex issues regarding sexual relationships between peacekeepers and the so-called beneficiaries of assistance. The term sexual relationships has been employed by the UN to address a range of sexual practices between peacekeepers and locals: 'from temporary and transactional to open-ended or permanent'. While the zero tolerance policy addressed a broad spectrum of sexual practices, and applied the same 'blunt tool of prohibition' to all of them, this method was not extended to sexual relationships.<sup>116</sup> Under the Bulletin, the official UN position is that sexual relationships are 'strongly discouraged'. Discretion is provided to senior UN authorities to determine whether relationships are exploitative.<sup>117</sup> Responding to earlier criticism levied at the UN for denying local women and peacekeepers a degree of sexual agency in managing relations, it determined that these groups should be entrusted with the responsibility to distinguish between 'sexually exploitative and non-exploitative sex' in peacekeeping operations. Theoretically, the rule was supposed to help eradicate stereotypes of local women as inherently vulnerable and peacekeepers as predators.<sup>118</sup> Practically, the 'ambiguities' in the

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<sup>113</sup> Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, pp.30-1.

<sup>114</sup> For example, age of consent differs from state to state. 'This is the age of consent around the world', *The Independent*, (February 2015), available at, <http://i100.independent.co.uk/article/this-is-the-age-of-consent-around-the-world--eyHrota93g>, (accessed 11 September 2015).

<sup>115</sup> Burke, *Sexual Exploitation and Abuse by UN Military Contingents*, pp.30-1.

<sup>116</sup> Simm, *Sex in Peace Operations*, pp.171-2.

<sup>117</sup> Section 4.5: 'The Head of Department, Office or Mission may use his or her discretion in applying the standard prescribed in section 3.2(d), where beneficiaries of assistance are over the age of 18 and the circumstances of the case justify an exception'. *Ibid*, pp.171-2.

<sup>118</sup> Simic, 'Distinguishing between exploitative and nonexploitative sex', p.2.

rule are 'not easily amenable'.<sup>119</sup> Firstly, to strongly discourage sexual relationships 'regardless of consent, age and fair remuneration', equally undermines women's agency and sexual autonomy. Secondly, it distorts the distinction between sexual offences and consensual sexual intercourse from the perspective of the predominantly masculine peacekeeping contingents.<sup>120</sup> Even if we accept the UN's provision on sexual relationships, the term 'strongly discouraged' is highly problematic because it permits the use of individual judgement. This makes UN officials responsible for determining what constitutes a legitimate relationship.<sup>121</sup> This is very challenging, as it is often difficult to differentiate between 'transactions sex and a marriage-like relationship entered for the durations of a peacekeeper's posting whereby a "girlfriend" is supported in exchange for housework and sex.'<sup>122</sup>

Olivera Simic argues that overall, the Bulletin 'unjustly' treats all women as victims and all peacekeepers as sexual predators as a consequence of the UN's consistent failure to engage with gender as a core concern in addressing its daily business.<sup>123</sup> To achieve the practical promotion of equal human rights (for female victims in particular), the UN needs to acknowledge the practical realities of where peacekeeping missions are deployed, and how and why prostitution is used in these settings. Peacekeeping environments are 'characterized by collapsed economies, weak judicial systems, corrupt and ineffective law enforcement agencies, weak or non-existent rule of law, and significant power differentials between peacekeepers and the local populations.'<sup>124</sup> In such permissive environments, the potential for sexual violence against civilians is rooted in the collapse of law and order, socioeconomic infrastructure and socio-cultural norms found in post-conflict territories.<sup>125</sup> It is (as much as the pre-formed attitudes of deployed troops) this aspect of post-conflict reality which exposes local populations to risk from peacekeepers. Dianne Otto argues that in ignoring the significance of entrenched gender inequalities, including the reality of survival sex, the UN's current approach is flawed. Not only does it deny women's sexual agency, it also 'thwarts the larger project of realizing women's human rights.'<sup>126</sup> Further, it perpetuates

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<sup>119</sup> Simm, *Sex in Peace Operations*, p.172.

<sup>120</sup> Simic, 'Distinguishing between exploitative and nonexploitative sex', p.1.

<sup>121</sup> Simm, *Sex in Peace Operations*, p.172,

<sup>122</sup> Ibid.

<sup>123</sup> Under the Bulletin, both 'consent and age to be irrelevant to the question of whether sexual conduct is exploitative.' This is 'inconsistent with international human rights law.' Simic, 'Distinguishing between exploitative and nonexploitative sex', p.2.

<sup>124</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.130.

<sup>125</sup> Allais, 'Sexual Exploitation and Abuse by UN Peacekeepers', p. 3

<sup>126</sup> Dianne Otto, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies', in Vanessa E. Munro and Carl Stychin, (eds.), *Sexuality and the Law: Feminist Engagements*, (Routledge-Cavendish, 2007), p.271; Mari Katayanagi, 'UN Peacekeeping and Human Rights', in

expectations of masculine conduct in relation to women that are negative, and potentially damaging to more sensitive and nuanced masculinities.

The way sexual interchanges are used as currency and negotiation tools in post-conflict scenarios needs to be examined, to shift cultural attitudes which portray women as victims, and not as agents and survivors. The records illustrate that when on deployment, peacekeepers often pay for sex, and frequently use brothels and exchange sex with locals in return for food or other commodities, including protection. To date, research fails to explore the extent to which this also involves force and exploitation with a sexual dimension. Academics who have touched on aspects of this topic have largely investigated why women prostitute their bodies; not why peacekeepers pay for sex and the implications that this would have for understanding the nuances of militarised masculinities. The limited amount of raw data produced means that the policies which have been introduced to prevent such exploitation, and eliminate the culture of impunity, have failed to capture the extent and underlying cause of the problem.<sup>127</sup> Otto argues that the UN's zero tolerance policy, which bans the exchange of money for sex or other tradable goods, is a blunt instrument; it penalises rather than promotes women's human rights. The UN's failure to recognise the root causes of poverty and gender inequality in post-conflict regions undercuts the survival strategies and decision-making resources of the individuals involved. The argument is that the zero tolerance has served to cement the low social status of women and girls by penalising women's agency.<sup>128</sup> Arguably, this also serves to diminish the seriousness of cases where force has been employed by peacekeepers. This has a negative effect on gender-balanced human rights and has undermined the potential for construction of genuinely stable post-conflict states.

## 5 Moving Forward

The UN formally acknowledges the importance of involving women actively in post-conflict reconstruction.<sup>129</sup> It also relies heavily on peacekeeping forces to maintain peace and protect post-conflict populations. Part of peacebuilding involves promoting equal access to justice and gender-blind protection to victims of war crimes. Evidence has led gender experts to claim that the UN is failing in this area. It has been criticised for falling short on its

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Jared Genser and Bruno Stagno Ugarte, (eds.), *The United Nations Security Council in the Age of Human Rights*, (Cambridge University Press, 2014), p.145.

<sup>127</sup> Carol Harrington, *Politicization of Sexual Violence: From Abolitionism to Peacekeeping*, p.169.

<sup>128</sup> Otto, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies', pp.273-4; Katayanagi, 'UN Peacekeeping and Human Rights', p.145.

<sup>129</sup> 'Security Council Stresses Importance of Increasing Role of Women in Conflict Prevention, Resolution, Mediation; Peacebuilding', *United Nations Media Coverage and Press Releases*, (28 October 2011) <http://www.un.org/press/en/2011/sc10426.doc.htm>, (accessed 9 July 2015).

commitment to: protect and promote women's human rights; introduce and enforce robust (non-)legal mechanisms to prevent peacekeepers from committing gender-based sexual violence in post-conflict environments; ensure that cases of sexual exploitation and abuse committed by deployed peacekeepers are managed effectively; and that justice is secured for victims. Can the UN resolve these short-falls?

Permitting the prosecution of soldiers within civilian courts in TCC could be a viable solution. Where state extraterritorial jurisdiction is introduced, such countries are obliged to observe a minimum standard of due diligence for offences committed by their deployed military contingents. Legally states can be held responsible for their actions, the acts of their agents, and for omissions where they fail to comply with and meet standards under human rights treaties. States are obliged to do what is reasonable to preserve and protect the rights of victims.<sup>130</sup> Due diligence is understood as being bound by a 'standard of "reasonableness"'. The Inter-American Court of Human Rights states that a nation is responsible for taking 'reasonable steps to prevent human rights violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.'<sup>131</sup> But the regular omission by TCC to investigate and prosecute incidents involving their deployed soldiers suggests that, despite the legal obligation, such conduct remains tolerated in practice. Caroline Allais points out that countries have often either been too embarrassed by reports of misconduct by their soldiers during peacekeeping operations,<sup>132</sup> or have not considered the offences 'sufficiently grave' to prosecute.<sup>133</sup>

Not all agree that this is the reason for failure to tackle the issue. Richard Wilson and Emily Singer suggest that often many states actually do not have the necessary legal infrastructure for extraterritorial application of their criminal laws. This is especially the case where the formal justice mechanisms of such states also remain powerfully and traditionally masculine.<sup>134</sup> Even on occasions when TCC have attempted to take disciplinary action against alleged offenders, they frequently find that investigations against alleged perpetrators are insufficient or that evidence has not been collected in a manner which is compliant with national law.<sup>135</sup>

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<sup>130</sup> Burke, 'Shaming the State'.

<sup>131</sup> Ibid.

<sup>132</sup> Allais, 'Sexual Exploitation and Abuse by UN Peacekeepers', p.8.

<sup>133</sup> Burke 'Shaming the State'.

<sup>134</sup> Wilson et. al., 'Human Rights Violations by Peacekeeping Forces in Somalia', p.6.

<sup>135</sup> Allais, 'Sexual Exploitation and Abuse by UN Peacekeepers', p.9.

A further complication is the 'underprosecution of crimes against women' within a nation-state's own criminal justice system. Feminists argue that this has a profound impact on the prosecution of peacekeepers for crimes of sexual exploitation and abuse within the civilian court system: 'Ignorance of gender issues results in inadequate attention to crimes against women by national authorities.' Czech authorities rejected a charge relating to the alleged rape of a fellow US peacekeeper by two Czech peacekeepers. The court held that because the complainant had previously had consensual sex with one of the two accused, she must be held to have consented to the whole incident. This suggests that the Czech criminal court culture promotes a conception that where an individual has previously consented to sex with an individual, she is likely to always consent to sex where the same individual is involved. It also suggests that the men involved have no need to challenge their assumptions of consent.<sup>136</sup> The human rights of individual peacekeeping troops have regularly taken priority over any charge of violation of human rights brought by victims. This in turn promotes the value of predominantly masculine human rights over those of women and girls undermining the likelihood that the solution can be found in the national civilian courts. This then returns the problem to the UN's jurisdiction and responsibility.

Whilst the current system of criminal jurisdiction on UN peacekeeping has become increasingly 'systemised', missions of bodies such as the North Atlantic Treaty Organisation (NATO) involve more ad hoc arrangement[s].<sup>137</sup> In both UN and NATO peacekeeping operations, the rights of TCC over their soldiers are often secured and protected. In Bosnia-Herzegovina, the Dayton agreements stated that NATO armed forces would be under the exclusive jurisdiction of their nations-states.<sup>138</sup> SOFA's are used by NATO to regulate troops stationed in other member states. They establish and assign (amongst others) jurisdiction to either the contributing or the host nation, depending on whether the acts are punishable by one state or the other. For example, if the offence is punishable under the law of the troop contributing, but not under the host nation's law, then the former exercises exclusive authority over the case, and vice versa. Both assume 'concurrent authority' in cases where the conduct is punishable by the laws of both states. In those cases, the contributing country

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<sup>136</sup> Barbara Bedont, 'The Renewed Popularity of the Rule of Law', in Dyan Mazurana, Angela Raven-Roberts and Jane Parpart, *Gender, Conflict, and Peacekeeping*, (Rownan & Littlefield, 2005), p.90.

<sup>137</sup> NATO is an alliance of 28 countries from North America and Europe committed to fulfilling the goals of the North Atlantic Treaty signed on 4 April 1949. In accordance with the treaty, the fundamental role of NATO is to safeguard the freedom and security of its member countries by political and military means. NATO is playing an increasingly important role in crisis management and peacekeeping. See, <http://www.nato.int/cps/en/natohq/faq.htm>, (accessed 17 June 2015).

<sup>138</sup> Bedont, 'The Renewed Popularity of the Rule of Law', p.89.

has primary right to prosecute military contingents who commit offences, including those involving sexual exploitation and abuse.<sup>139</sup> The over-arching NATO SOFA provides that:

If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.<sup>140</sup>

Often SOFAs between the US and numerous other countries have also provided for some type of primary and secondary jurisdiction for offences committed by deployed US military personnel.<sup>141</sup>

Bedont suggests that the NATO model (which emulates the Rome Statute complementarity principle) could provide a potential solution for the UN in tackling both the issue of impunity, and the under-prosecution of crimes committed by deployed peacekeepers.<sup>142</sup> Under the model, primary jurisdiction could be granted to the TCC to prosecute its soldiers by the SOFA and contribution agreement. Where the offence committed is a crime in both territories, it could grant the host nation 'operation of exercising jurisdiction where the contributing states waives its primary jurisdiction'. There are also possibilities for granting secondary jurisdiction to other bodies such as the ICC or an ad hoc tribunal, with amendments to the terms.<sup>143</sup> In the event that an act is punishable only under the host nation's law, jurisdiction could be granted to them.<sup>144</sup> This would be particularly beneficial in cases of gender-based sexual violence, and protecting the human rights of women. Some UN TCC do not prohibit all types of gender-based or sexual violence. For instance, in some states, men who murder female relatives who are held to 'dishonour' their families are

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<sup>139</sup> Ibid.

<sup>140</sup> The SOFAs typically 'provide that the host state can exercise criminal jurisdiction over' US troops where the crime 'was committed outside the army base or where the offense is punishable by the law of the host state, but not by the law' of the US. The US SOFAs also allow the nation 'with primary jurisdiction over a case to notify the other' nation and to 'waive its right to prosecute, as in Article VII (3) (c) of the NATO SOFA.' See Article XXII, 'Agreement under Article IV of the Mutual Defence Treaty regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea,' (July 9 1969), *United Nations Treaty Series* 674, p. 164; Article XVI, 'Agreement under Article VI of the Treaty of Mutual Co-operation and Security between Japan and the United States regarding Facilities and Areas and the Status of United States Armed Forces in Japan', (January 19 1960), *United Nations Treaty Series* 373, p. 248; and Article VIII, 'Agreement between the Government of the Commonwealth of Australia and the United States of America concerning the Status of United States Forces in Australia,' (May 9 1963), *United Nations Treaty Series* 469, p.56; Ibid, pp.89, 165.

<sup>141</sup> Ibid, p. 89

<sup>142</sup> Bedont, 'The Renewed Popularity of the Rule of Law', p. 89

<sup>143</sup> This model was used in 1953, for an agreement regarding UN military personnel based in Japan. The agreement established between Australia, Canada, New Zealand, the United Kingdom (UK), US, and Japan provided 'a system for criminal jurisdiction that is identical to the system laid out in the NATO SOFA'. Ibid, p. 89

<sup>144</sup> Ibid.

protected from criminal prosecution under the country's penal code. Other countries do not prosecute rape and other forms of sexual violence if the perpetrator is married to/marries the victim.<sup>145</sup> This is particularly problematic in UN peacekeeping operations, as peacekeepers often marry their victims.<sup>146</sup> Others 'have onerous evidentiary rules'. This makes it difficult to secure convictions for sexual violence and reinforces the culture of impunity towards these crimes.<sup>147</sup>

The NATO model also provides provisions to ensure that both TCC and host nations cooperate, and provide updates on developments/progress made in cases. Additionally, the former's military authorities can exercise criminal and disciplinary jurisdiction over individuals 'subject to its military law' within the receiving state; enabling them to proceed locally with investigations/trials in the state where the offence took place. This would limit the risk of encountering problems associated with victims and local populations being uninformed about the fate of perpetrators of sexual exploitation and abuse.<sup>148</sup>

This model would preserve a degree of control by TCC over their soldiers. It would also compel these countries to take action against troops who commit criminal offences during deployment, and report its progress to both the host nation and the UN. Though it is rare that states surrender their jurisdiction, there have been occasions where 'states have not insisted on their strict legal rights when faced with great public pressure' and scrutiny. For instance, in 1995, in Okinawa, locals were publically angered that a US soldier had allegedly raped a Japanese girl. Protests followed which called for a US military base to withdraw from Japan. Attempting to maintain relations and appease the locals, the US waived its rights and permitted the Japanese authorities to arrest the soldier before he was formally indicted. It is important to note that this is not a general procedure. Nevertheless, 'an alternative model exists', and it is one that could be acceptable to the various states involved. This could then serve to assuage the problem of impunity for crimes committed by peacekeepers.<sup>149</sup>

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<sup>145</sup> See the report of Equality Now on discriminatory laws around the world, Fareda Banda 'Project on a Mechanism to Address Laws that Discriminate against Women', Commissioned by the Office of the High Commissioner for Human Rights – Women's Rights and Gender Unit, (6 March 2008), [http://www.ohchr.org/Documents/Publications/laws\\_that\\_discriminate\\_against\\_women.pdf](http://www.ohchr.org/Documents/Publications/laws_that_discriminate_against_women.pdf), (accessed 27 June 2015). Ibid, p.91.

<sup>146</sup> Including as a way of providing what is identified by a number of societies as a form of 'compensation'. Olivera Simic and Melanie O'Brien, "Peacekeeper Babies": An Unintended Legacy of United Nations Peace Support Operations', *International Peacekeeping*, (2014), 21(3) p.345.

<sup>147</sup> Bedont, 'The Renewed Popularity of the Rule of Law', p.91.

<sup>148</sup> Ibid, p.92.

<sup>149</sup> Ibid.



The NATO model arguably provides a plausible solution for improving the management and prosecution of crimes committed by deployed peacekeepers, and the issue of state accountability. Equally, in contrast to the UN system, the agreements outlined offer greater equality between TCC and host nations, and their respective jurisdictional arrangements.<sup>150</sup> However, there are fundamental challenges which the model fails to address. In being part of individual national legal processes, military courts of national authorities are often responsible for prosecuting peacekeepers for crimes involving sexual exploitation and abuse. Not only were military court systems set up to deal with military crimes, which predominantly relate to misconduct and maintenance of discipline within the military; they also presumed the masculinity of the justice process within such courts. They consequently lack the basic structures and safeguards to secure gender-blind justice for victims (especially in cases with a sexual dimension), and fail to ensure their human rights.<sup>151</sup>

The military in any nation-state remains predominantly male-dominated, despite growing numbers of females in the armed services of many Western countries. In safeguarding internal military cultures and standards of discipline, a military force is likely to prioritise and interpret breaches of conduct according to its internal rules. It is therefore 'unsuitable' for use in prosecuting cases committed against women by peacekeepers which involve sexual violence. Especially given the poor record that most military forces have with similar prosecutions involving female members of their own ranks.<sup>152</sup> Feminists argue that the ongoing problem is rooted in the militarized masculinity and 'glorification' of masculine aggression; aggressive attitudes considered instrumental in conflict are condoned in militaries and privileged over so-called feminine qualities.<sup>153</sup> This is clearly illustrated in the pattern of the prosecutions of peacekeepers for such crimes. For example, in 1997, the Italian armed forces failed to take action against Italian peacekeepers charged with 'violation [rape], torture and maltreatment against civilians', because such offences were not 'provided for by the Military Penal Code' in such circumstances. The troops were subsequently disciplined but not prosecuted. Allocating responsibility for prosecution of crimes against women to individuals who operate in this culture is problematic, because of the inherent contradictions in priorities and agendas.

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<sup>150</sup> Ibid, p.90.

<sup>151</sup> Ibid, p.90.

<sup>152</sup> Anne K. Ream reported that the US military trivialises rape and sexual violence committed by personnel of the armed forces. In 2004, Lt. Jennifer Dyer reported that she had been raped by a fellow officer. Dyer was 'threatened with criminal prosecution for filing a false report'. See, Lucinda Marshall, 'Rape in the US military', *Los Angeles Times*, (30 January 2008), available at, <http://www.latimes.com/opinion/la-oew-marshall30jan30-story.html>, (accessed 26 June 2015)

<sup>153</sup> Bedont, 'The Renewed Popularity of the Rule of Law', p.90.

The complex nature of UN peacekeeping operations and management of deployed peacekeepers pose significant challenges in both prosecuting cases and protecting the human rights of the victims. These challenges cannot be met successfully by any 'single state or organisation: it requires a multi-dimensional approach.<sup>154</sup> Employing the NATO model is one potentially viable solution. It could provide a clear 'division of labour' between the UN, troop contributing and host nations. From the evidence examined, the UN is not equipped to fully address the political, social and military aspects of peacekeeping, which continue to promote impunity towards these crimes. The UN must do better in promoting co-operation with the international community, including non-government organisations such as AIDS-Free World, to effectively address and eradicate the culture of impunity in peacekeeping operations. This will also help the UN to achieve its wider aim of establishing and securing international human rights standards.<sup>155</sup> As suggested by Abdela and Murphy, this will include informed, robust pre-deployment gender training programmes, which go beyond the scope of current programmes. Providing initiatives to increase the number of female troops deployed in peacekeeping will also help to counter the institutionalised hypermasculine culture present in the military.

## **Conclusion**

It is easy to lay blame, and many of the commentators on the issue of the consequences of the culture of impunity do so. But where should the balance of blame lie? What this article has shown is that this is a very complex issue and that an absence of consciously-gendered, assertive action derives from both the TCC *and* the UN. Only slow progress towards gender-balanced preventative and punitive measures has been made by most of the TCCs. Certainly action has included the introduction of a gesture at least towards gender-sensitive training programmes for peacekeepers which are intended to make peacekeepers aware of their own masculine assumptions. The programmes are essential for informing them about appropriate attitudes and behaviour towards women, and the seriousness which these programmes are taken during deployment, but the trainers need to take them seriously and to ensure that the leaders of troops about to be deployed are fully on board with the new ideas, or they are unlikely to be either able or willing to enforce these new perspectives on the men (and occasionally women) under their command. TCCs have certainly been too slow in enforcing the necessary 'uniform designed rules', arguing that this is because of cultural difference in the acceptance of certain behaviours. This, in turn, has reinforced the

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<sup>154</sup> Bakradze, 'Analysis of the Different Models of Peace Support Operations and Forms of NATO Involvement, as a Part of a New Security Architecture', p.43.

<sup>155</sup> *Human Rights and Peacekeeping*.

culture of impunity.<sup>156</sup> But this is not surprising and the key responsibility lies not with the TCCs but rather, with the UN itself.

The reality is that despite the introduction of a zero-tolerance policy for sexual misconduct for peacekeepers, the UN continues to struggle even to recognise and confront the issue of impunity at all levels of its operations. It is as part of this that it encounters great difficulty in getting contributing countries to investigate and prosecute their offending peacekeepers thereafter.<sup>157</sup> This seriously affects women's access to human rights in post-conflict societies, and has negative connotations for the authority of the UN as an arbiter of human rights standards in situations where violations of these are being charged. To be fair, recently the UN has placed a real emphasis on introducing preventive measures to eliminate sexual exploitation and abuse being committed by deployed peacekeepers, as this article has also shown.<sup>158</sup> The Secretary-General has introduced a code of conduct, which is written into contracts of UN peacekeeper personnel and the UN has also insisted that it is focused on ensuring that perpetrators are punished and prosecuted.<sup>159</sup> Nevertheless, the recent developments highlighted here suggest much more needs to be done if sexual exploitation and abuse as a regular corollary to peacekeeping operations is to be eliminated.

Upholding 'peace and security' and 'respecting human rights' constitute the 'two main purposes' of the UN.<sup>160</sup> In failing to address the issue of impunity as a challenge to the human rights of civilian populations (especially the women within those populations), it is failing to address the real core of the problem, and undermining the organisation's fundamental purpose. It has to be acknowledged that there is significant opposition from member states, but even more significant is the ongoing inertia from UN personnel at all levels of the institution when it comes to modifying the existing system. This inherent inbuilt inertia means that it is likely that reform will only occur if there is a push externally for change, which is genuinely and intrinsically gender sensitive. Hence the urgent need to analyse recent developments made in international law and justice, and their wider implications.<sup>161</sup> In that sense, it is essential to maintain and even enhance the current level of critical attacks on the UN and its lack of will to go beyond rhetoric and enforce its own

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<sup>156</sup> Allais, 'Sexual Exploitation and Abuse by UN Peacekeepers', p.9.

<sup>157</sup> Steve Stecklow and Joe Lauria, 'UN Mum on Probes of Sex-Abuse Allegations', *Wall Street Journal*, (21 March 2010), <http://www.wsj.com/articles/SB10001424052748704188104575083334130312808>, (accessed 21 July 2105).

<sup>158</sup> Ndulo, 'The United Nations Responses to the Sexual Abuse and Exploitation', p.150.

<sup>159</sup> Ibid, p.152.

<sup>160</sup> *Human Rights and Peacekeeping*, p.15.

<sup>161</sup> Bedont, 'The Renewed Popularity of the Rule of Law', pp.92-3.

policies and regulations. The hopeful sign is that more widely there are figures, such as Lieutenant General David Morrison, coming forward to take a lead in changing wider military and social cultures.<sup>162</sup> More figures like this need to be encouraged and their work given a high profile by the critical commentators on the UN's actions. It is only through such initiatives and the dissemination of information about them that change is likely to be implemented. The most dangerous threat to human rights is complacency; the feeling that policies are in place and so enough is being done. It is not.

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<sup>162</sup> Former Chief of the Australian Army, Lieutenant General David Morrison (2011-2015), made substantial efforts to deal with discrimination against women in the army and sexual violence committed by male combatants. See, 'Chief of Army Lieutenant General David Morrison message about unacceptable behaviour'.