

**VICTIMIZING THOSE THEY WERE SENT TO
PROTECT: ENHANCING ACCOUNTABILITY FOR
CHILDREN BORN OF SEXUAL ABUSE AND
EXPLOITATION BY UN PEACEKEEPERS**

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ABSTRACT

This note addresses the legal and procedural gaps for women who are victims of sexual exploitation and abuse by United Nations Peacekeepers (commonly referred to as Blue Helmets). This paper proposes

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remedies for women who have to care for and protect “Peacekeeping babies” abandoned by their Peacekeeper fathers after their deployment ended. After an examination of the current oversight systems instituted by the UN, Host States and Troop Contributing Countries (TCCs), it is evident that UN Peacekeepers are largely unaccountable to victims of sexual abuse and their unplanned children. This note proposes that Peacekeepers who father children in the field should be held accountable for their children. It argues that new mechanisms and procedures for accountability should be established, including: the revision of the Model Status of Forces Agreement to include a genetic database (i.e., requiring Peacekeepers to provide DNA samples), an agreement between the Host State and Peacekeeper Contributing State through which TCCs issue child support orders enforceable by, and paid through, the Host States, and the creation of a United Nations interim compensation fund assisting mothers pending the establishment of a Peacekeeper’s paternity.

INTRODUCTION

United Nations Peacekeeping Operations, under the Department of Peacekeeping Operations (DPKO), are intended to create lasting peace in countries torn by conflict.¹ “UN [P]eacekeeping mission[s are] typically initiated when a conflict situation within or between countries changes—for better or for worse—and [there is] pressure . . . from international actors for the UN to step in.”² The Security Council is responsible for ensuring that there is broad consensus within the international community before placing Peacekeepers in areas of conflict.³ This includes informing both countries about the mandate and size of the mission.⁴ The mission has to be clear and accepted by the parties to the dispute before troops enter.⁵ Peacekeepers come from varied Peacekeeper Contributing Countries (TCCs)—rich, poor, big and small—and are united with the mission to foster peace in places stricken by conflict.⁶ However, some Peacekeepers are harming the very civilians whom they were sent to protect by

1. *Peacekeeping Operations*, UNITED NATIONS, available at <http://www.un.org/en/Peacekeeping/operations/> †last visited Oct. 20, 2016).

2. KELLY NEUDORFER, *SEXUAL EXPLOITATION AND ABUSE IN UN PEACEKEEPING: AN ANALYSIS OF RISK AND PREVENTION FACTORS* 9 (2015).

3. UNITED NATIONS, *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACEKEEPING* 6 (2nd ed. 1990).

4. NEUDORFER, *supra* note 2, at 59.

5. UNITED NATIONS, *supra* note 3, at 6.

6. *Troops and Police Contributors*, UNITED NATIONS, available at <http://www.un.org/en/Peacekeeping/resources/statistics/contributors.shtml> (last visited Oct. 20, 2016).

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engaging in quid pro quo sexual relations with women in the Host State.⁷ Women often feel pressured to engage in sexual conduct with Peacekeepers, as they have access to material resources, which the women desperately need.⁸ Unfortunately, many of these relations result in pregnancy,⁹ leaving women more reliant on the Peacekeeper to provide resources for both her and her child.¹⁰ This imbalance of power highlights that these mothers, who are raising a child in a community that often frowns upon women getting pregnant out of wedlock, are not in the position to care for the child's wellbeing.¹¹ Additionally, some of the victims of abuse and exploitation are very young and have to drop out of school to become mothers, furthering the burden of parenthood.¹²

To demonstrate the continued problem of civilians being sexually abused and exploited by Peacekeepers, this paper categorizes sexual abuse and exploitation together. However, it is important to know the distinction: “[T]here is sexual exploitation, which often involves prostitution or unequal power relationships between consenting adults; and then there is sexual abuse, which usually involves rape, or some sort of extortionist sex for food or for money.”¹³ This paper will use the word “victim” to describe women who are impregnated by the Peacekeepers. Further, all personnel that contribute to the UN Peacekeeping Mission will be classified as Peacekeepers, regardless of their role.¹⁴

7. See Sarah Martin, Gender Advocate, Refugees Int'l, ‘Must Boys Be Boys?': Confronting Sexual Exploitation and Abuse in UN Peacekeeping Operations, Consortium Lecture at the Consortium on Gender, Security & Human Rights (Feb. 1, 2006) (transcript available at genderandsecurity.org).

8. See *id.*

9. Alejandro Diego Villaverde, Peacekeeping Babies: Nine Moths to be Born, Years to be Recognized 4 (Dec. 15, 2015) (unpublished manuscript) (on file with the Graduate Institute of Geneva).

10. See *id.*

11. See *id.*

12. Martin, *supra* note 7, at 12.

13. *Id.* At 6.

14. See Suk Chun, *Sexual Exploitation and Abuse by UN Peacekeepers*, PRIO (Oct. 2009), available at http://file.prio.no/Publication_files/Prio/Sexual%20Exploitation%20and%20Abuse%20by%20UN%20Peacekeepers,%20PRIO%20Policy%20Brief%2010%202009.pdf (last visited Sept. 5, 2016) (“[t]he perpetrators are generally UN military, police and civilian personnel engaged in [P]eacekeeping operations, who are in the position to utilize humanitarian aid and services intended to benefit local population as . . . tools of exploitation”); see also, Marco Odello, *Tackling Criminal Acts in Peacekeeping Operations: The Accountability of Peacekeepers*, 15 (2) J. CONFLICT & SECURITY L. 347, 366 (2010) (“[t]he main distinction is based on military members of national contingents and other types of personnel. The first are considered to fall under the ‘exclusive jurisdiction’ of the TCC. The other cases are covered by the UN personnel status and immunities . . . The distinction is based on the relationship of the personnel with the UN. Due to the absence of a permanent UN military structure under UN direct command, military personnel ‘are provided

Current policies and procedures do not hold Peacekeepers accountable for their actions during deployment and do not deter Peacekeepers from sexually abusing and exploiting civilians.¹⁵ As a result, it falls upon the UN, Host States and TCCs to revise disciplinary procedures so that Peacekeepers are held accountable for their actions. Currently, “[t]he UN has a three-pronged strategy to address all form of misconduct including sexual exploitation and abuse: [(1)] prevention of misconduct, [(2)] enforcement of UN standards of conduct and [(3)] remedial action,”¹⁶ and the TCCs are responsible for punishing the Peacekeepers because they have exclusive jurisdiction over their own nationals.¹⁷ However, in March 2013, the UN’s Office of International Oversight Services reported, “the rate of related criminal prosecutions remains negligible.”¹⁸ The reason for this is that in order to prosecute there must be sufficient evidence, and TCCs are limited in their capacity to conduct criminal investigations because the alleged crimes are committed in the Host State.¹⁹ Without criminal accountability, there is little deterrence. Therefore, this paper proposes a revision of the UN, Host States and TCCs’ disciplinary procedures, and the creation of binding agreements between countries for Peacekeepers to be held accountable for their actions. Furthermore, to address gaps in liability, this paper proposes that there be a significant change in procedures, which hold Peacekeepers civilly liable for their actions. One proposed solution is to examine the jurisdictional limitations placed upon TCCs, Host States and the United Nations to discipline Peacekeepers who sexually abuse and exploit civilians. Specifically, it will focus on the immunity of the Peacekeepers and the agreements to

by s sending State as representatives of that state.’ Their status is covered by a MoU between the sending State and the UN, which gives the TCC exclusive jurisdiction over its troops on the basis of a practice established since UNEF, and included in paragraph 47(b) of the Model SOFA. This issue has been particularly significant for all TCCs because they would not allow their troops to fall under foreign jurisdiction”).

15. See generally Muna Ndulo, *The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions*, 27 BERKELEY J. INT’L L. 127, 146 (2009).

16. *Conduct and Discipline*, UNITED NATIONS, available at <http://www.un.org/en/peacekeeping/issues/cdu.shtml> (last visited Oct. 15, 2016).

17. Milena Petrova, *Criminal Misconduct and Sexual Offenses by UN Personnel During Peacekeeping Missions: Responses and Challenges*, BEYOND INTRACTABILITY (Feb. 2015), available at <http://www.beyondintractability.org/library/criminal-misconduct-and-sexual-offenses-committed-un-personnel-during-peacekeeping-missions> (last visited Oct. 15, 2016).

18. Carla Ferstman, *Special Report: Criminalizing Sexual Exploitation and Abuse by Peacekeepers*, U.S. INST. OF PEACE (Sept. 2013), available at [http://www.usip.org/sites/default/files/SR335-](http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf)

[Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf](http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf) (last visited Oct. 15, 2016).

19. *Id.*

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which countries are bound: the Model of Status of Forces Agreement and the Model Memorandum of Understanding.²⁰

Next, this paper will address the reports that exposed sexual abuse and exploitation as a problem in Peacekeeping Operations, and the procedures implemented to discipline Peacekeepers, which are inadequate because they fail to meet the needs of the victims and do not hold fathers accountable. By proposing that Peacekeepers be held civilly and financially liable, then Peacekeepers might be deterred from committing such crimes because there will be consequences once their deployment ends. Such consequences would be enforced by: (1) changing the Model Status of Forces Agreement to have Peacekeepers provide a DNA sample to be kept in a genetic database to determine paternity, (2) having an agreement between the Host States and the TCCs to ensure the TCCs hold their nationals financially responsible by issuing a child support order paid through the Host States, and (3) for the United Nations to provide victims with relief through an interim fund, paid for by TCCs and Host States, until paternity is established and child support is ordered.

I. JURISDICTIONAL ISSUES

The UN does not have its own military force to carry out Peacekeeping missions, and instead relies on TCCs to staff Peacekeepers to create peace in places of conflict.²¹ These Peacekeepers remain under the authority of their respective TCC's armed forces for disciplinary actions stemming from any wrongdoing done in the Host State.²² However, the United Nations and Host States lack jurisdiction to try Peacekeepers for their illegal activities.²³ The UN concedes that under international law, it is responsible for Peacekeepers' actions while on duty, but because the sexual abuse and exploitation of civilians is conducted done while "off-duty", the UN bears no liability for it.²⁴

The Model Status of Forces Agreement and the Memorandum of Understanding (two agreements discussed in greater detail later) are agreements that give TCCs exclusive jurisdiction over their soldiers.²⁵ Allowing TCCs alone to be responsible for disciplining their nationals

20. See Petrova, *supra* note 17.

21. See Ndulo, *supra* note 15, at 147.

22. See VALERIE SPERLING, *ALTERED STATES: THE GLOBALIZATION OF ACCOUNTABILITY* 206 (2009).

23. Alexandra R. Harrington, *Prostituting Peace: The Impact of Sending State's Legal Regimes on U.N. Peacekeepers Behavior and Suggestions to Protect the Populations Peacekeepers Guard*, 17 J. TRANSNAT'L L. & POL'Y 219, 236 (2008).

24. See NEUDORFER, *supra* note 2, at 13.

25. Petrova, *supra* note 17.

for offenses that occur in the field is inadequate, however, because without a Host State's cooperation in investigations, TCCs are unable to prosecute or hold Peacekeepers accountable.²⁶ Until new standards and jurisdictional rules are adopted, Peacekeepers will continue to engage in illegal acts, particularly illicit sex with citizens in the Host State, and the lack of accountability will keep exploitation an ongoing problem.²⁷ Furthermore, this lack of accountability undermines Peacekeeping Operations because Peacekeepers are perceived to do more harm than good.²⁸

The sexual misconduct of Peacekeepers has plagued the United Nations since Peacekeeping Missions began more than fifty years ago.²⁹ It has been determined that 125,000 Peacekeepers spanning over sixteen locations throughout the world have engaged in sexual relationships with civilians.³⁰ Therefore, jurisdictional issues need to be addressed so TCCs and Host States can work together to ensure Peacekeeper accountability for their misconduct.

26. *Id.*

27. Katherine N. Andrews, *Signs of Progress in Improving UN Peacekeepers Accountability*, STIMSON (Oct. 15, 2007), available at <http://www.stimson.org/spotlight/signs-of-progress-in-improving-un-peacekeeper-accountability/> (last visited Oct. 14, 2015).

28. SPERLING, *supra* note 22, at 206. The action of the Peacekeepers potentially jeopardizes the entire function of a Peacekeeping operation because allowing Peacekeepers to enter a host state can cause more harm than good. Chun, *supra* note 14. Additionally, the two main purposes of a Peacekeeping missions is "consolidating security and fostering development The issue of SEA highlights the lack of economic opportunities for women in post-conflict societies." *Id.* Moreover, because Peacekeepers are coming from various several countries, allegations of sexual exploiting and abusing civilians are not associated with an isolated case. The allegations become even more damaging when it in portrayed on the media as an ongoing problem. Ndulo, *supra* note 15, at 130. The media has exposed The United Nations and have illustrated that the United Nations who is instrumental is furthering general equality is now at the brunt of the sexually exploitation and abuse against women by their very own Peacekeepers. Elizabeth F. Defeis, *U.N. Peacekeepers and Sexual Abuse Exploitation: An End to Impunity*, 7 WASH. U. GLOBAL STUD. L. REV. 185, 185-86 (2008). The sexual misconduct is further hurting the reputation of the UN who was awarded with the 1988 Nobile Peace Price for having Peacekeeping forces. *Id.* at 190. "[S]exual exploitation and abuse of humanitarian staff cannot be tolerated. It violates everything that the United Nations stands for" Ndulo, *supra* note 15, at 146.

29. Natalie Novick, *When those Meant to Keep the Peace Commit Sexualized Violence*, WOMEN'S MEDIA CENTER (May 25, 2012), available at <http://www.womenundersiegeproject.org/blog/entry/when-those-meant-to-keep-the-peace-commit-sexualized-violence> (last visited Oct. 17, 2016) ("as the number of missions and Peacekeepers has grown, widespread account of inappropriate behavior and sexual exploitation by Peacekeepers have been reported around the world, notably in Haiti, Guinea, Liberia, Sierra Leone, Bosnia, Cambodia, East Timor, and the Democratic Republic of the Congo").

30. *UN Quietly Offers DNA Tests to Address 'Peacekeepers Babies' and Sexual Abuse Claims*, RT: QUESTION MORE (June 14, 2015), available at <https://www.rt.com/news/267055-un-peacekeeper-babies-dna/> (last visited Oct. 17, 2016) [hereinafter '*Peacekeepers Babies*'].

A. Immunity for Peacekeepers

According to one scholar,

The current structure of immunities within international law creates gaps in liability and fosters an environment in which Peacekeepers can act with perceived immunity. Although international human rights law relies on domestic legal systems for enforcement, functional immunities attach to [UN] personnel while they are on a mission. Thus, Peacekeepers are immune from prosecution for crimes they commit in the course of their Peacekeeping function.³¹

A 1946 amendment to the Convention on the Privileges and Immunities of the United Nations (Privileges and Immunities Convention) confers diplomatic immunity upon UN workers, including Peacekeepers.³² The purpose of the amendment was to “prevent member states from using false charges or prosecution against UN staff as political weapons against each other,” but the unintended loophole means Peacekeepers that commit sex crimes are cloaked with immunity and consequently cannot be held accountable for their offenses.³³ Though Articles 20 and 23 of the Convention allow the Secretary-General to waive immunity if it would impede justice, meaning the Security-General cannot make decisions that would prejudice the UN’s interests, which is to carry out their missions.³⁴ “Issues of jurisdiction and immunity play a key role when looking at the occurrence of [sexual exploitation and abuse]. . . [r]evoking the immunity of [Peacekeepers] would likely also result in many nations withdrawing their soldiers. . . [which would have] a negative impact on UN Peacekeeping in general.”³⁵ In addition, new jurisdictional guidelines create several problems which might deter TCCs from sending Peacekeepers by changing who has control of investigating misconduct and allowing the UN to waive immunity which attaches to Peacekeepers.³⁶

31. Catherine E. Sweetser, *Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel*, 83 N.Y.U. L. REV. 1643, 1652-53 (2008).

32. Matt Petronizio, *Activists Call for Inquiry on United Nations’ Handling of Rapes and Sexual Offenses*, MASHABLE (May 15, 2015, 18:17:32 PM), available at <http://mashable.com/2015/05/13/code-blue-united-nations-sexual-abuse/> (last visited Oct. 17, 2016).

33. *Id.*

34. Sweetser, *supra* note 31, at 1654.

35. NEUDORFER, *supra* note 2, at 22; see also Machiko Kanetake, *Whose Zero Tolerance Counts? Reassessing a Zero Tolerance Policy Against Sexual Exploitation and Abuse by UN Peacekeepers* 17 INT’L PEACEKEEPING 200 (2010). Though the reputation of the United Nations when their Peacekeepers are engaging in sexual misconduct with the Host State’s civilians is tainted, the UN has an incentive to try to address the ongoing problem because the UN relies heavily on Peacekeeping Missions. *Id.*

36. See generally UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 165 (Chiyuji Aoi, Cedric de Conning & Ramesh Thakur eds., 2007) [hereinafter Chiyuji Aoi].

Peacekeepers are governed by agreements between the UN, the TCCs, and the Host States.³⁷ These agreements establish clear limitations on the respective jurisdiction of the states involved over the conduct of Peacekeepers, which limits accountability and punishment of soldiers.³⁸ TCCs are supposed to hold their Peacekeepers accountable for criminal acts, but they cannot fully investigate the matter or punish actions not committed on their soil.³⁹ Host States, in turn, cannot prosecute or punish Peacekeepers for misconduct against their civilians.⁴⁰ In addition, “[t]rials are not held in civilian courts, but in military courts most often in the peacekeeper’s home country, not where the abuse occurred. This is a clear path to immunity from punishment, as men are tried by their peers in a context in which impartiality is questionable.”⁴¹ Without TCCs being able to actively investigate and prosecute their personnel for offenses committed in the field, Peacekeepers can continue to hide behind a screen of immunity.⁴²

B. Model Status of Forces Agreement

The UN Model Status of Forces Agreement (SOFA) serves as the basis for all agreements between the UN and Host States.⁴³ The agreement is negotiated between the Host State and the UN in accordance with United Nations Charter Article 43.⁴⁴ This agreement is unique to UN Peacekeeping Operations and expands upon the rights guaranteed by the Privileges and Immunities Convention and bars Host States from exercising jurisdiction over TCCs’ Peacekeepers.⁴⁵ The Model SOFA also limits the UN’s responsibility for the conduct of Peacekeepers and mandates that TCCs have exclusive jurisdiction over their nationals for the offenses Peacekeepers commit in the Host State,⁴⁶ as explained in Article IV of

37. See generally Sweetser, *supra* note 31.

38. *Id.* at 1652-53.

39. *Id.*

40. *Id.*

41. Novick, *supra* note 29.

42. Rosa Freedman, *Why do Peacekeepers have Immunity in Sex Abuse Cases?* CNN (May 25, 2015), available at <http://www.cnn.com/2015/05/22/opinions/freedman-un-peacekeepers-immunity/> (last visited Oct. 15, 2016).

43. Sweetser, *supra* note 31, at 1654.

44. Petrova, *supra* note 17.

45. See BRUCE OSWALD ET AL., DOCUMENTS ON THE LAW OF UN PEACE OPERATIONS 36 (2010).

46. Andrews, *supra* note 27, at 236; Zsuzsanna Deen-Racsmany, *The Amended UN Model Memorandum of Understanding: A New Incentive for States to Discipline and Prosecute Military Members of Nation Peacekeeping Contingents?* 16(2) J CONFLICT SEC. L. 321, 340 (JUNE 1, 2011); Anthony J. Miller, *Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations* 39 CORNELL INT’L L.J. 71, 75 (2006); GABRIELLE

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General Assembly A/45/594 in its report to the Secretary General on October 9, 1990.⁴⁷ It is also important to note that the TCCs' jurisdiction holds regardless of whether there is a valid SOFA in place, because national military contingents have immunity.⁴⁸ Until a specific SOFA enters into force, there is a general understanding and acceptance that a Model SOFA (specifically the 1990 Model as proposed by the Security Council Resolution, General Assembly 52/12b) is to be applied.⁴⁹

Moreover, since TCCs have exclusive jurisdiction to prosecute and discipline their Peacekeepers, it becomes unclear whether the Peacekeepers are being held accountable for their actions in the Host State.⁵⁰ "Often the perpetrators are sent home and no further action is taken by the home country [(TCCs)], making it impossible for victims to decipher what, if any, punishment was imposed."⁵¹ Though the exact number of Peacekeepers reported to have raped, murdered or trafficked women is unknown,⁵² the Model SOFA controls the discipline once the investigation comes back founded.⁵³ The Model SOFA allows the TCCs to discipline Peacekeepers who commit sex crimes against civilians in the Host State.⁵⁴ Therefore SOFAs themselves create logistical problems.⁵⁵ Immunity prevents the Host State from disciplining Peacekeepers, while TCCs are prevented from prosecuting crimes that occurred outside their borders under the principle of extraterritoriality.⁵⁶ With or without a SOFA in place, there are a number of obstacles to holding a Peacekeeper

SIMM, *SEX IN PEACE OPERATIONS* 54, 58-59 (2013) ("In peace operations, the most relevant principles of jurisdiction are those between [host] state and the sending state [TCCs] . . . Host States may fail to exercise territorial jurisdiction due to the lack of a functioning legal system available to prosecute those accused of crimes . . . Host State authorities may believe that exercise of jurisdiction is not possible due to immunities from which international personnel benefit . . . However, there are practical reasons why private military contractors are unlikely to be prosecuted in Host States. These include the reluctance of Host States to prosecute for political reasons and the factual dependence of some Host States on PMSCs for their security . . . Sending states have likewise proven reticent to prosecute their nations for a range of reasons").

47. G.A. Res. A/45/594, ¶ 48 (Oct. 9, 1990).

48. NEUDORFER, *supra* note 2, at 13.

49. OSWALD, *supra* note 45, at 36.

50. *Id.*

51. *Id.*

52. UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 165 (Chiyuji Aoi, Cedric de Conning & Ramesh Thakur eds., 2007) [hereinafter Chiyujii Aoi]; Chiyuju Aoi, *supra* note 36, at 165.

53. G.A. Res. A/45/594, *supra* note 47, at ¶ 40.

54. *See id.*

55. NEUDORFER, *supra* note 2, at 14.

56. *Id.*

accountable for his conduct in the field.⁵⁷

The problem with SOFAs will be addressed in the proposed solution, which evaluates the jurisdictional disconnect between TCCs and Host States. Since the UN does not have jurisdiction to punish the Peacekeeper or hold him financially responsible,⁵⁸ the international community will have to work collectively to ensure that justice will be served for victims. The first proposed solution is to change the Model Status of Forces Agreement to require that each TCC establish a genetic database of the DNA of each Peacekeeper, to be used if/when paternity becomes an issue. With DNA on file, the Host State can hold the Peacekeeper accountable by looking at the database to determine paternity by contacting the appropriate TCC. Once paternity is determined, it is no longer an issue of the father being criminally prosecuted. Rather, proceedings will be oriented towards holding him financially responsible for the child he sired. Child support orders would be handled by the TCC and would be paid to the Host State for administration to the victim. During the time it takes for paternity to be established and the court order requiring the Peacekeeper to pay financial support to be implemented, the UN should afford a presumption of paternity to the claimant. To that end, the UN should establish an interim fund with contributions from each TCC and the Host States out of which child support would be paid. The fact that TCCs and Host States would be required to contribute to this fund would create an incentive for them to investigate paternity claims expeditiously. Until the jurisdictional challenges are addressed, victims will continue to be vulnerable because they are left supporting a child on their own.

C. Model Memorandum of Understanding

When a SOFA recognizes a TCC's jurisdiction over their Peacekeepers, establishing the responsibility to prosecute (or discipline) Peacekeepers for their wrongdoing, it becomes the TCC's job to hold Peacekeepers accountable for breaking standards and policies.⁵⁹ "The [Model Memorandum of Understanding] (MOU) contains guidelines and codes of conduct for members of both military and civilian national personnel . . ."⁶⁰ Typically, the TCC becomes aware of the allegations against one of its Peacekeepers after being instructed to further investigate by the Secretary-General.⁶¹ "The Secretary-General's power is to investigate

57. *Id.*

58. See Deen-Racsmany, *supra* note 46, at 328.

59. See Miller, *supra* note 46, at 82.

60. Petrova, *supra* note 17, at 2, 3.

61. See Miller, *supra* note 46, at 83.

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the allegations [against the Peacekeeper] and forward the results of the investigation to the appropriate TCC.”⁶² After a preliminary investigation reveals that an allegation is substantiated the Peacekeeper is deported back to his home state and banned from participating in Peacekeeping operations in the future.⁶³ Once home, the burden falls on the TCC to hold the Peacekeeper accountable for criminal and disciplinary action.⁶⁴ To address the concerns that the TCCs were not taking victim’s reports seriously, the Model Memorandum of Understanding was implemented.⁶⁵ This agreement is between the UN and the TCC and is aimed at enforcing the obligations of the TCC as set forth in the Status of Forces Agreement.⁶⁶ The agreement requires a TCC to sign a country-specific MOU that acknowledges its responsibilities and explains that the TCC will have jurisdiction over Peacekeepers that commit crimes in a Host State.⁶⁷ The MOU was amended in 2007 at the recommendation of General Assembly Resolution 61/267B in 2007.⁶⁸ The amendments were aimed at addressing the sexual exploitation and abuse of civilians by Peacekeepers.⁶⁹ The purpose of the MOU is to ensure that UN standards of conduct for the Peacekeepers are followed and to establish safeguards and policies for those who do not already have them in place (including

62. *Id.*

63. NEUDORFER, *supra* note 2, at 58, 59.

64. Miller, *supra* note 46, at 83.

65. *See generally* OSWALD, *supra* note 45, at 6 (stating the flaws and legal concerns around the UN Standards of Conduct for military members of national contingents (MMsNCS) was amended and regulated in 2007 with the UN Model Memorandum of Understanding (MOU)); *see* Deen-Racsmany, *supra* note 46 at 323 (stating the 1997 Model MOU responded to the SEA projects and acknowledged that the UN lacked a way to hold a criminal accountable by making drastic amendments to the MOU. The goal was for the amendments to address the criminal misconduct occurring on missions. It was amended a decade later in 2007 using suggestion from the 2005 Zeid Report); *Id.* “Prior to 2007, next to mission-specific rules of engagement specifying conditions for the use of force, the only substantive legal binding and enforceable rules of conduct applicable to the MMsNCs are those states in ‘Ten Rules: Code of Conduct for Blue Helmets’ and ‘We Are United Nations Peacekeepers’ to which all TCCs had agreed [And] to ‘comply with Guidelines on International Humanitarian Law for Forces Undertaking United Nations Peacekeeping Operations and the applicable portions of the Universal Declarations of Human Rights as the fundamental basis of [their] standards’, to respect the local environment as well as local customs, treat the local population with respect, obey UN superiors and respect the chain of conduct [Not to inflict physical, sexual or psychological harm on members of the local population, especially women and children.]” *Id.* at 325, 326.

66. Investigations Manual, U.N. Office of Internal Oversight Services, *available at* https://oios.un.org/resources/2015/01/OIOS_ID_Manual2015.pdf (last visited Mar. 5, 2017).

67. Romy Nieuwenhuizen, *Who Will Guard the Guardians?: Sexual Exploitation and Abuse by Peacekeepers: Focus on the Democratic Republic of the Congo*, *available at* <http://arno.uvt.nl/show.cgi?fid=132415> (last visited Oct. 16, 2016).

68. OSWALD, *supra* note 45, at 51.

69. *Id.*

discipline, ramifications and follow-up with the victims).⁷⁰

However, the 2007 MOU focuses specifically on “the provisions compelling all Peacekeepers to abide by the . . . [UN] standards of conduct, especially with regard to sexual exploitation and abuse. This coupled with the new accountability measures and TCCs expanding their jurisdiction in criminal⁷¹ and disciplinary matters can aide in the process.”⁷² This agreement suffers defects similar to those of the SOFA because the constraints only require that TCCs teach Peacekeepers about new policies and, collectively with the UN, ensure that Peacekeepers are returned to their home state after allegations of wrongdoing.⁷³ After discharge, the punishment is practically over because “proving sex crimes is one of the most difficult prosecutor challenges for even the most sophisticated criminal justice system, let alone for Peacekeeping Operations, which, at present, are woefully ill-equipped to investigate them.”⁷⁴ As such, Peacekeepers that choose to sexually abuse and exploit women prevail without penalty because there is not a reliable criminal process in place.⁷⁵

D Security Council Resolution

The final factor in determining who has jurisdiction over the Peacekeepers who engage in misconduct and crimes in a Host State, is the individual Security Council Resolution which determined the operation’s mandate and size.⁷⁶ In general, a Security Council Resolution decides when and where UN Peacekeepers will be deployed.⁷⁷ The Security

70. U.N. Secretary-General, *Secretary-General’s Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, U.N. Doc. ST/SGB/2003/13 (Oct. 9, 2003) (The Secretary-General outlined measures against sexual exploitation and abuse, and defines the sexual nature misconduct in ST/SGB/2003/13).

71. OSWALD, *supra* note 45, at 51; *See generally*, Chun, *supra* note 14 (claiming a very small number of TCCs have expanded their criminal jurisdiction to prosecute actions while the Peacekeepers is deployed in a Peacekeeping mission).

72. OSWALD, *supra* note 45, at 51.

73. Press Release, GAOR, Fourth Committee, Recommendations on Peacekeeping Operations Approved by Fourth Committee, Including Proposed ‘United Nations Standards of Conduct,’ U.N. Press Release GA/SPD/368 (July 17, 2007).

74. NEUDORFER, *supra* note 2, at 59.

75. *Id.*; SIMM, *supra* note 42, at 59 (TCCs have trouble prosecuting because “[t]heir domestic law may not permit the exercise of extraterritorial jurisdiction. It may be difficult and expensive to meet evidentiary requirements for criminal prosecution when the victim and witnesses are in another jurisdiction”).

76. *Forming a New Operation*, UNITED NATIONS PEACEKEEPING, available at <http://www.un.org/en/peacekeeping/operations/newoperation.shtml> (last visited Oct. 17, 2016).

77. *Role of the Security Council*, UNITED NATIONS PEACEKEEPING, available at <http://www.un.org/en/peacekeeping/operations/rolesc.shtml> (last visited Oct. 17, 2016).

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Council should be greatly concerned with the conduct of UN Peacekeepers because “not only does [sexual exploitation and abuse] increase the suffering of an already vulnerable sector of the population. . . it undermines the Peacekeeping mission’s ability to achieve its mandate.”⁷⁸ The Security Council should be mindful that “a Peacekeeping mission cannot credibly advise the government on adherence to international human rights standards while its Peacekeepers are violating international human rights law.”⁷⁹

However, the Security Council further shields Peacekeepers from being punished for engaging in crimes by deciding who has immunity.⁸⁰ Since the Council deals directly with the privileges and immunities of Peacekeeping operations as defined by UN Charter Article 105 and the UN Convention on the Privileges and Immunities,⁸¹ the Security Council “establishes the mandate for the operation and provides further guidance to the host country and Member States.” By shielding Peacekeepers from discipline there’s little deterrence to stop engaging in such crimes.⁸²

II. CURRENT POLICIES AND PROCEDURES IN PLACE TO ADDRESS THE PROBLEM OF PEACEKEEPERS SEXUALLY ABUSING CIVILIANS

Permitting UN Peacekeeping missions to continue on the understanding that Peacekeepers will sexually abuse and exploit civilians is unacceptable. However, credit must be given to the UN, the Host States and the TCCs for trying to implement policies to correct the wrongdoing of the Peacekeepers.⁸³ For decades the United Nations has recorded allegations of sexual exploitation and abuse by UN Peacekeepers against

78. Jenna Stern, *Reducing Sexual Exploitation and Abuse in UN Peacekeeping: Ten Years After the Zeid Report* (Feb. 2015), available at https://www.stimson.org/sites/default/files/file-attachments/Policy-Brief-Sexual-Abuse-Feb-2015-WEB_0.pdf (last visited Sept. 3, 2016).

79. *Id.*

80. *UN Peacekeepers Exempted from War Crimes Prosecution for Another Year*, UN NEWS CENTRE (June 12, 2003), available at <http://www.un.org/apps/news/story.asp?NewsID=7402#.VkOOirRN3zI> (last visited Oct. 17, 2016).

81. Petrova, *supra* note 17, at 2.

82. OSWALD, *supra* note 45, at 485.

83. NEUDORFER, *supra* note 2, at 2 (“Particularly the sexual crimes, including rape, forced and consensual prostitution, and human trafficking for the purposes of prostitution, were drawn into the spotlight, and the UN quickly addressed these. To name just a few measures, the UN wrote a new Code of Conduct in 1998 specifically regulating soldiers’ sexual activity, passed the United Nations Security Council (UNSC) Resolution 1325 on Women, Peace and Security in 2000, passed it successor resolutions began to record and publish data on these incidents starting in 2003, appointed an advisor to the Security-General on sexual

civilians receiving aid and assistance as a result of their country being in conflict.⁸⁴ For years, the General Assembly has proposed resolutions and amendments for stricter disciplinary policies and better investigation protocols to punish Peacekeepers that have quid pro quo sex.⁸⁵ However, the implementation and goals of such procedures are falling short in practice.⁸⁶

[D]espite . . . [the] efforts to address the issue of [sexually exploiting and abusing civilians], allegations continued to be leveled against UN peacekeeping personnel . . . [T]he fact that allegations continue to be made suggest[s] that the preventive and punitive measures currently in place have been far from effective in eliminating the problem.⁸⁷

In addition, the current policies and systems focus almost entirely on the disciplinary process, criminal prosecution and enforcement of UN Standards of Conduct.⁸⁸ However, these procedures ignore the damage left behind by UN Peacekeepers when their deployment is over—particularly the children produced as a result of sexual abuse, and frequently, their mothers' ostracism from their communities.⁸⁹ Examining the resources, remedies and procedures currently in place to assist victims only underscores the failings of the system.

A. *The Group of Legal Experts Report*

Since this paper is intended to address the civil liability to be imposed on UN Peacekeepers who father children, it is important to mention how criminal procedures work to hold Peacekeepers accountable. The Report of Legal Experts is a comprehensive report that is influential because it addresses the failure of criminal prosecution against Peacekeepers who are sexually abusing and exploiting civilians.⁹⁰ The full title of the Report is *Ensuring the Accountability of United Nations Staff and Ex-*

exploitation and abuse by UN Peacekeeping personnel in 2004, and created a strategy to eliminate sexual exploitation and abuse in the future in 2005").

84. See generally, *Peacekeeping Operations*, *supra* note 1.

85. Ndulo, *supra* note 15, at 146 (however, consent does not carry much weight in the standards and procedures set by the UN because the purpose of the Peacekeeper is to protect and not there to engage in sex. The Peacekeeper's job when on mission is to advance peace and not exploit the civilians who are already in compromised situations).

86. See generally Deen-Racsmany, *supra* note 46.

87. Chun, *supra* note 14.

88. See generally Deen-Racsmany, *supra* note 46.

89. Harrington, *supra* note 23, at 227.

90. Sweetser, *supra* note 31, at 1651 (additionally, the Report of Legal Experts highlights the jurisdictional issues addressed above).

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*perts on Mission with Respect to Criminal Acts Committed in Peacekeeping Operations.*⁹¹ It is

[F]ocused mainly on ensuring that states exercise jurisdiction over their own nationals in order to improve factfinding capability and enforcement. It recommends a shared exercise of jurisdiction by the host state and other states . . . so that investigatory functions can be carried out by one state and prosecution by another.⁹²

The Report suggests that a proposed Draft Convention on Criminal Responsibility of Experts on Mission for the UN be concluded and promulgated so that any criminal acts done during a UN Peacekeeping Mission would be addressed with prosecutorial consequences.⁹³ Mainly, it would serve as another safeguard to hold Peacekeepers accountable for their actions.⁹⁴

B. Zeid Report

One of the most prominent authorities addressing the ongoing problem is a report authored in 2005 by Prince Zeid of Jordan, a former Peacekeeper himself⁹⁵ and now the UN's Human Rights Chief.⁹⁶ Prince Zeid was asked by former UN Secretary-General Kofi Annan⁹⁷ to write a comprehensive report on the sexual exploitation and abuse problem in Peacekeeping missions and to make recommendations, commonly referred to

91. Odello, *supra* note 14, at 353 (this report also addressed the limitations that jurisdiction put on enforcing policies and procedures and how the agreements that the UN, Host States and the TCCs are entering into is limiting what can be done to address the sexual misconduct of the Peacekeeper.) "The two main issues were considered: (a) the contingent members are not generally bound by the [Security-General] Bulletin on sexual exploitation and abuse until the troop-contributing country has concluded and signed the Memorandum of Understanding (MOU) or agreement, and (b) UN [Peacekeeping Operations] may include different categories of personnel (civilian, military and police), which are governed by different rules and disciplinary procedures." *Id.*

92. Sweetser, *supra* note 31, at 1651.

93. Odello, *supra* note 14, at 353-54.

94. *Id.* at 384.

95. Stern, *supra* note 78.

96. *UN Finally Taking Action on 'Peacekeeper Babies': Organization Officers DNA Test to Prove Paternity*, NEWSER (June 13, 2015), available at <http://www.newser.com/story/208250/un-finally-taking-action-on-Peacekeeper-babies.html> (last visited Oct. 15, 2016).

97. Ndulo, *supra* note 15, at 130, 149; Chun, *supra* note 14 (stating "In October 2003, then UN secretary-general Kofi Annan issues a bulletin on 'Special Measures for Protection from Special Exploitation and Abuse . . . The secretary-general's bulletin was the first that the UN had publically acknowledged the problem of SEA and sought to enforce system-wide measures to counter it." The other problem with the bulletin being that it states standards and protocols which must be followed, but it is limiting in actually affording Peacekeepers to follow it because it is not legally binding. Meaning, those who are unaware of the bulletin fall under the jurisdiction of the TCCs and the Security General has their hands tied).

as the *Zeid Report*.⁹⁸ Former Secretary-General Annan requested the information because he was aware that procedures then in place were inadequate to address the long problem of UN Peacekeepers engaging in sexual misconduct against the civilians they were supposed to protect.⁹⁹ “The Zeid Report [made] recommendations in four general areas: (1) creation of a common set of rules; (2) formation of a professional investigation capability; (3) introduction of measures to ensure organizational, managerial, and command responsibility; and (4) establishment of procedures to ensure individual disciplinary, financial and criminal accountability.”¹⁰⁰

This report proved instrumental in highlighting the crimes and human rights violations committed by UN Peacekeepers.¹⁰¹ Allegations of misconduct towards the local populations over the greater course of a decade changed the perception of UN Peacekeepers and forced the UN to respond to the incidents.¹⁰² Furthermore, the Report prompted the former Secretary-General to acknowledge the ongoing problem and set forth a plan for action. However, even the procedures and policies put in place have been inadequate in practice.¹⁰³

Prince Zeid also determined that the investigatory process for complaints of sexual abuse and exploitation needed to be overhauled, so that Peacekeepers could actually be disciplined for their crimes and violations of conduct standards.¹⁰⁴ Presently, there are two ways victims can bring forth a complaint. The first is at the Conduct and Discipline Unit (CDU) located at the Department of Field Support in UN headquarters.¹⁰⁵ The second is by reporting allegations of misconduct to the Investigation Division of the Office of Internal Oversight Services (OIOS).¹⁰⁶ After the

98. Martin, *supra* note 7.

99. See Defeis, *supra* note 28, at 188.

100. Miller, *supra* note 46, at 73.

101. See generally Deen-Racsmany, *supra* note 46.

102. *Id.*

103. Stern, *supra* note 78.

104. See Vanessa L Kent, *Peacekeepers as Perpetrators of Abuse: Examining the UN's Plans to Eliminate and Address Cases of Sexual Exploitation and Abuse in Peacekeeping Operations*, 14(2) AFR. SEC. REV. 85, 88-9 (2005).

105. Jenna Stern, *Reducing Sexual Exploitation and Abuse in UN Peacekeeping, Ten Years After the Zeid Report*, CIVILIANS IN CONFLICT (Feb. 2015), available at https://www.stimson.org/sites/default/files/file-attachments/Policy-Brief-Sexual-Abuse-Feb-2015-WEB_0.pdf (last visited Mar. 5, 2017). The CDU is responsible to overseeing the Conduct Discipline Teams (CDTs) who report to the Head of the Mission allegations during Peacekeeping missions. *Id.*

106. Kanetake, *supra* note 35, at 204 (“the birth of OIOS is counted among the series of UN reforms since the 1980s undertaken in response to the New Public Management concept

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complaint is filed, the allegation is reviewed by the Board of Inquiry (Board) to determine whether there is sufficient evidence to act on the reported allegation.¹⁰⁷ It is then subjectively determined by the Board whether the incident should be reported to the Special Representative of the Secretary-General for further action.¹⁰⁸ In the interim, it remains the responsibility of the Board to record, monitor, and identify patterns of complaints and to do its best to protect victims.¹⁰⁹

The next step is for the Secretary-General to send the results of the investigation to the relevant TCC so they can hold the alleged offender accountable.¹¹⁰ Two of the main flaws here are that mission headquarters often do not take investigations seriously, or there are no follow-throughs by OIOS to ensure that a Peacekeeper is actually disciplined and that the victim is protected.¹¹¹ The fundamental problem is that the investigation process involves so many different entities on so many different levels and it is not clear where the responsibilities of each authority lie. Instead, officials push the report through the levels until responsibility dissipates and the Peacekeeper remains unpunished. As a result, there is virtually no deterrence to stop the Peacekeeper from engaging in the same behavior again. After the Zeid Report was published, Refugees International issued its own report calling on the UN to take responsibility in addressing the problem of sexually abuse and exploitation of civilians.¹¹² The report stated that the UN should fire officials who failed to carry out policies to eliminate abuse.¹¹³

The Zeid Report made a further recommendation on the remedies and resources that should be available to victims of sexual abuse and exploitation.¹¹⁴ Prince Zeid suggested that the victims receive some type of compensation (monetary, based on Peacekeepers' wages) for the harm

and mounting pressure for the US Congress"); Chun, *supra* note 14 (OIOS reports and recommendations were included in the 2003 UN General Assembly Resolution A/57/306, which ask the secretary-general to implement preventative measures to avoid future sexual exploitation cases in Peacekeeping missions).

107. Kent, *supra* note 104, at 88-9.

108. *Id.*

109. *Id.*

110. Miller, *supra* note 46, at 83.

111. Kent, *supra* note 104, at 89. The flaw in the system of relying on TCCs will continue to be a problem to the overall operation and reputation of UN Peacekeeping missions. *Id.* There is "no parallel investigation by the OIOS," instead it's up to the TCCs to decide quality of the investigation and decide which disciplinary actions should be taken. Kanetake *supra* note 35, at 206.

112. SPERLING, *supra* note 22, at 213.

113. *Id.*

114. *See generally* Deen-Racsmany, *supra* note 46.

suffered.¹¹⁵ In addition, if the Peacekeeper fathered a child and paternity was established, the Secretary-General was to implement procedures to test DNA in order to hold Peacekeepers accountable for their actions.¹¹⁶ Currently, “[i]t is up to the discretion of the troop-contributing states to decide how to address paternity claims brought against their troops by alleged victims,”¹¹⁷ which is very problematic. Until paternity becomes a required part of the investigations of allegations of victims who bear Peacekeepers’ babies, the father cannot be responsible for the child.

C. “Zero-Tolerance Policy”

As a direct result of the Zeid Report, in late 2005 former Secretary-General Annan implemented a zero-tolerance policy for “any form of sexual misconduct by UN Peacekeeping personnel.”¹¹⁸ However, it is important to emphasize that not all sexual relationships with the local population are prohibited within the UN Peacekeeping Mission. Rather, it is strongly encouraged that no Peacekeeper engage in a sexual relationship when deployed.¹¹⁹ The zero-tolerance policy is aimed at both restoring international confidence in UN Peacekeeping missions and further building upon the former Secretary-General’s 2003 Bulletin, which forbids Peacekeepers from soliciting prostitutes.¹²⁰ Furthermore, the zero-tolerance policy was implemented to send a message to all those who are involved in UN Peacekeeping Operation missions that sexual misconduct will not be accepted or tolerated.¹²¹ But, as Prince Zeid stated to a *London Times* reporter, “[t]he situation appears to be one of ‘zero-compliance with zero tolerance’ throughout the mission.”¹²²

During former Secretary-General Annan’s last month in office, he noted that the policies and procedures in place remained ineffective.¹²³

115. SPERLING, *supra* note 22, at 213. “Compensation, in contrast, will give survivors support necessary to rebuild their lives, both post-conflict and post-trauma. The Zeid Report point out that “[m]any victims, especially those who have ‘Peacekeeper babies’ and who have been abandoned by the fathers, are in desperate financial situation.” Sweetser, *supra* note 31, at 1662.

116. *See Peacekeepers Babies*, *supra* note 30.

117. *Id.*

118. Chun, *supra* note 14.

119. Stern, *supra* note 78.

120. Kanetake, *supra* 35, at 202 (“Prostitution” is a broad terms used to address the sexual abuse and exploitation of the civilians. It is “uniform labeling of Peacekeeper-related prostitution and exploitative and abusive does not reflect the reality that some girls and women have engaged in sex as the only resource for survival”).

121. *See id.* at 210.

122. Defeis, *supra* note 28, at 188.

123. *Id.* at 189, *quoting* Press Release, Secretary-General Kofi-Annan, Sexual Exploitation ‘Utterly Immoral’, Completely at Odds with United Nations Mission, says Secretary-

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Specifically, he stated “[m]y message of zero-tolerance has still not got through to all those who need to hear it — from managers and commanders on the ground, to all our other personnel.”¹²⁴ Yet the next Secretary-General, Ban Ki-moon, continued to carry out the zero-tolerance policy, he failed to do anything that would increase its efficacy. Nor has he entertained the idea of trying a new method to end Peacekeepers from sexually exploiting and abusing civilians. Former Secretary General Ban Ki-moon has stated, “[t]he UN standard on the issue is clear — zero tolerance, meaning zero complacency and zero impunity . . . It is the U.N.’s policy to treat credible allegations of sexual exploitation and abuse as serious offences to be investigated by the Office of Internal Oversight Services (IOS).”¹²⁵

The problem with the zero-tolerance policy is that it was not applied uniformly.¹²⁶ To address this concern, the Peacekeeper Code of Conduct, published in 2002, was updated to include recommendations from the Zeid Report, with a new set of rules that were distributed to all the Peacekeepers.¹²⁷ The recommendations were titled, *We Are United Nations Peacekeepers* and *Ten Rules: Code of Personal Conduct for Blue Helmets*.¹²⁸ “Both publications regulate the conduct of Peacekeepers in general terms and explicitly prohibit sexual exploitation.”¹²⁹ The most relevant rule appears in *Ten Rules*: “[d]o ‘not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff; especially women and children.’” *We are United Nations Peacekeepers* states “[w]e will never commit any act that

General to New York Conference, U.N. Doc. SG/SM/10776 (Dec. 4, 2006), *available at* <http://www.un.org/press/en/2006/sgsm10776.doc.htm> (last visited Feb. 13, 2017).

124. Defeis, *supra* note 28, at 189, *quoting* Press Release, Secretary-General Kofi-Annan, Sexual Exploitation ‘Utterly Immoral’, Completely at Odds with United Nations Mission, says Secretary-General to New York Conference, U.N. Doc. SG/SM/10776 (Dec. 4, 2006), *available at* <http://www.un.org/press/en/2006/sgsm10776.doc.htm> (last visited Feb. 13, 2017).

125. Defeis, *supra* note 28, at 190.

126. SPERLING, *supra* note 22, at 208. “[O]ne pertinent question remains: whose zero tolerance matters to this policy?” *See generally* Kanetake *supra* note 35, at 200. “There are two methods to apply the uniform standards to all components. The first is to individually revise agreements with personnel and contingent-contributing countries. This approach was adopted by the UN, following the recommendations of the Zeid Report. [Second], members of the national military contingents and formed police units . . . sign an ‘undertaking’ on appointment, whereby they agree to comply with administrative issuances and the two principle code of conducts . . . a similar revision was made with respects to the Condition of Services for UN volunteers and the General Conditions for consultants and individual contractors.” *Id.* at 203.

127. OSWALD, *supra* note 45, at 377-378.

128. SPERLING, *supra* note 22, at 208.

129. Defeis, *supra* note 28, at 193.

could result in physical, sexual or psychological harm or suffering to members of the local population, especially women and children; become involved in sexual liaisons which could affect our impartiality, or the wellbeing of others.”¹³⁰ If UN Peacekeepers violate these rules in any capacity, on or off duty, the TCCs are responsible for disciplining the Peacekeepers, even though they are working under the UN umbrella.¹³¹

Furthermore, the idea of zero-tolerance was adopted in UN Security Council Resolution 1888.¹³² Adopted on September 30, 2009, the Resolution sought to hold Peacekeepers who violate the zero-tolerance policy for sexual misconduct accountable for their actions.¹³³ However, despite additional training, education, and campaigns aimed at improving and informing Peacekeepers about the zero-tolerance policy, both prior to the deployment and once the Peacekeepers arrive at the Peacekeeping mission, individual Peacekeepers continue to engage in conduct that violates the standards set forth.¹³⁴ The CDU at the UN Mission’s Headquarters regulates and monitors Peacekeepers to ensure that protocol is being followed.¹³⁵ Still, the CDU cannot hold the Peacekeepers criminally accountable for their actions.¹³⁶ Instead, the CDU is limited to sanctions against the Peacekeeper after administrative investigations for personnel.¹³⁷

D. Security Council’s Resolutions

The Security Council is responsible for passing and implementing resolutions to minimize the damage done by UN Peacekeepers who sexually abuse victims in Host States.¹³⁸ In 2000, the Security Council adopted Resolution 1325 on Women, Peace and Security.¹³⁹ “Resolution

130. SPERLING, *supra* note 22, at 208-09.

131. Defeis, *supra* note 28, at 194.

132. S.C. Res. 1888, ¶ 21 (Sept. 30, 2009).

133. Chun, *supra* note 14.

134. See Brian D. Tittmore, *Belligerents in Blue Helmets: Applying International Humanitarian Law to United Nations Peace Operations*, 33 STAN. J. INT’L L. 61, 117 (1997).

135. Deen- Racsmány, *supra* note 46, at 321.

136. See Catherine Lutz, Matthew Gutmann & Keith Brown, *Conduct and Discipline in UN Peacekeeping Operations: Culture, Political Economy and Gender*, WATSON INST. FOR INT’L STUD. (Report to CDU, Oct. 19, 2009), available at http://watson.brown.edu/files/watson/imce/research/projects/sea_un/SEA_Final_Report_2009.pdf (last visited Mar. 5, 2017).

137. See *id.*; Deen- Racsmány, *supra* note 46, at 321 (tying into the jurisdiction issues raised above). The problem with implementing amendments and policy to address the sexual misconduct epidemic is that it cannot be enforced correctly because the UN does not have jurisdiction and it is relying on TCCs to enforce the discipline of their own soldiers. See also Ndulo, *supra* note 15, at 147.

138. OSWALD, *supra* note 45, at 485.

139. Ndulo, *supra* note 15, at 132.

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1325 particularly focused on rape and other forms of sexual abuse, as well as all other forms of violence in situations of armed conflict, calling on members [of the UN] to fully implement international humanitarian and human rights law that protects the rights of women and girls.”¹⁴⁰ The resolution made an appeal to the Secretary-General and “to all parties to an armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians.”¹⁴¹ Resolution 1325 also asked the UN Secretary-General to implement new measures and procedures to expand the role women have in the field of UN Peacekeeping Operations.¹⁴² One of the objectives of this approach was to make female victims more comfortable in reporting allegations of sexual abuse and exploitation by allowing them to report such allegations to a female officer.¹⁴³

Security Council Resolution 1820 on Sexual Violence in Armed Conflict represented another attempt to address the ongoing problem. This Resolution clearly addressed the need for change in order to preserve the purpose of UN Peacekeeping and to assist developing countries. As one commentator noted, “[i]n Resolution 1820, the Security Council described sexual violence as a tactic of war used to humiliate, dominate, instill fear in, and/or forcibly relocate civilian members of a community or ethnic group” and noted the importance of making peace and ensuring security in the Host State.¹⁴⁴

III. VICTIMS

When the UN Special Representative to Cambodia, Yasushi Akashi, stated in 1993 that “boys will be boys” when asked about the accusations of [P]eacekeepers sexually abusing the local population, it was widely regarded as a poor choice of words, but not much was done to investigate the claim or counter-act what was often seen as [inevitable].¹⁴⁵

140. *Id.*; see generally S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct.1, 2000); Defeis, *supra* note 28, at 193 (Resolution 1325 “mandated that UN Peacekeeping missions commanders take into account the differential impact of their actions on women and men. Recognizing the needs to incorporate gender-oriented perspective into Peacekeeping [missions]”).

141. Odello, *supra* note 14, at 347.

142. S.C. Res. 1325, ¶ 4 (Oct. 31, 2000).

143. Defeis, *supra* note 28, at 193.

144. Ndulo, *supra* note 15, at 133; see also S.C. Res. 1820, U.N. Doc S/RES/1820, ¶ 5 (June 19, 2008).

145. NEUDORFER, *supra* note 2, at 1. Historically, sexual violence crimes were considered an unavoidable consequence of war. In 1993, sex crimes against women came to the forefront in the Vienna Conference on Human Rights when women’s rights activist demanded a change in dialogue and would not accepted the “boys will be boys” reasoning for getting

Historically, women have been uniquely vulnerable during times of war and domestic conflict.¹⁴⁶ Women and young girls turn to prostitution in order secure access to money and resources.¹⁴⁷ In the context of Peacekeeping Operations, UN Peacekeepers may use their power to persuade women to engage in sexual conduct with them.¹⁴⁸ The mechanisms that are currently in place to address sexual exploitation by UN Peacekeepers fail both the victims and the children born out of that victimization.¹⁴⁹

In 2007, the “UN Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel” recommended that each mission headquarters be equipped with resources and assistance to aid victims.¹⁵⁰

[UN] officials here have tried to encourage the reporting of sexual abuse by setting up a hotline for victims and buying radio ads in which [the victims] are encouraged to come forward. Victims of abuse . . . [who] are documented are eligible for medical and psychological help . . . [b]ut many women are still unaware of how to register complaints.¹⁵¹

The goal was to ensure that when a victim came forward she would receive medical, legal and psychological support¹⁵² Additionally, by having victims come forward, UN officials would provide a way for pregnant victims to establish paternity and file child support claims,¹⁵³ as well as meet the medical needs of women who contracted sexually transmitted diseases (STDs) from Peacekeepers.¹⁵⁴ “In general . . . there are babies born due to the lack of birth control in these countries, and men’s reluctance to use condoms.”¹⁵⁵

away with such crimes. Ndulo, *supra* note 15, at 131. Moreover, the United Nations, on one hand, tries to implement policies to address the sexual misconduct on Peacekeepers, but on the other hand they brushes off the issues saying that is behavior of just a few. So the questions must be asked, is what the UN has been doing for the decades a ploy to rebuild their reputation in the public or are they actually concern about the civilians? Kanetake, *supra* note 35, at 209.

146. See Ndulo, *supra* note 15, at 131.

147. *Id.* at 145.

148. See *id.* at 132.

149. See *id.*

150. Stern, *supra* note 78, at 15.

151. Kevin Sieff, *Sometimes When I’m Alone: Members of a U.N. Peacekeeping Force in the Central African Republic Allegedly Turned to Sexual Predation, Betraying their Duty to Protect*, THE WASH. POST (Feb. 27, 2016), available at http://www.washingtonpost.com/sf/world/2016/02/27/Peacekeepers/?tid=sm_fb (last visited Oct. 16, 2016).

152. Stern, *supra* note 78, at 15.

153. *Id.*

154. See Martin, *supra* note 7.

155. *Id.* at 12.

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Peacekeepers are sexually abusing young female civilians.¹⁵⁶ At such a young age, these girls are forced to drop out of school and are left with no education, a child, and the child's father is back in his home state (TCCs).¹⁵⁷ Current procedures require that offending Peacekeepers be sent back to their home state.¹⁵⁸ Victims are not apprised of the UN's investigation or any subsequent legal proceedings, which makes it difficult for victims and their families to receive closure.¹⁵⁹ It would be beneficial for victims to know if their perpetrators were held accountable for their actions and were subsequently punished¹⁶⁰ because it facilitates closure for victims and their families.¹⁶¹

Moreover, the UN, Host States, and TCCs must recognize victims' needs collectively, because victims are not getting sufficient support from their communities to care for their unplanned children. It is not uncommon for cultural norms in places of conflict to disapprove of children born out of wedlock.¹⁶² As such, these mothers are often ostracized from their communities and forced to care for children without any support, which leads to further trauma.¹⁶³ Alexandra Harrington has noted:

In many . . . situations, the victim is often reluctant to report the sexual abuse to the [UN] or even their own families. The societal beliefs of host countries are often very conservative and view women and their sexual purity as property to be maintained by the family. . . [I]t is well documented that victims of [P]eacekeepers are reluctant to tell their families of their abuse for fear of physical punishment and/or ostracization from their families and communities.¹⁶⁴

156. Chun, *supra* note 14 (“[A] number of recent NGO studies and UN investigations have suggested that the group that is most exposed to the risk of SEA is made up of children between the ages of 13 and 18 who have either been separated from their parents or displaced from home communities, as well as those dependent on humanitarian assistance”).

157. Martin, *supra* note 7, at 12; Owen Bowcott, *Report Reveals Shame of UN Peacekeepers*, THE GUARDIAN (Mar. 24, 2005) available at <http://www.theguardian.com/world/2005/mar/25/unitednations> (last visited Oct. 16, 2016) (stating that Peacekeepers sent to Liberia were committing sex crimes with young 12 year old girls).

158. Defeis, *supra* note 28, at 206-7.

159. SPERLING, *supra* note 22, at 212.

160. *Id.*

161. *Id.*

162. Ndulo, *supra* note 15, at 130.

163. SIMM, *supra* note 46, at 12.

164. Harrington, *supra* note 23, at 233-34 (stating “where familial and societal pressure do not militate against reporting sexual abuse, victims often remain reluctant to come forward because of the power disparity between the U.N. Peacekeepers and the victims. In a situation where a woman or her family is surviving because of U.N. rations and assistance, it is logical that she will not report the crime out of fear that she and her family will lose the aid upon which they depend for survival”).

Prince Zeid's report noted this phenomenon when he highlighted that mothers with "Peacekeeper babies" do not have any family or support to help them care for their child.¹⁶⁵

Any proposed solution to the problem of sexual abuse and exploitation by UN Peacekeepers must include financial support for both the mothers and the Peacekeepers' children. There are funds to help mothers, including the UN Voluntary Fund for Victims of Torture and the UN Voluntary Trust Fund on Contemporary Forms of Slavery, but these funds are insufficient.¹⁶⁶ As one source explains,

[T]he Fund for Torture Victims guidelines explicitly state that '[t]he Fund does not provide financial compensation to victims.' Only applications by NGOs are admissible under the Fund . . . though such funds ultimately may be disbursed to victims . . . [however] its budget remains small. The Slavery Fund, which focuses its efforts on sexual abuse and trafficking, has struggled as well.¹⁶⁷

Financial support should really come from the fathers, who should be held financially accountable for their conduct. Until the fathers are held accountable and forced to pay child support, the proposed solution is for the UN to provide interim funds. This would give the UN and the countries paying into the fund an incentive to establish paternity expeditiously.

IV. FATHER'S ROLE

It is worthwhile to consider that the male's perspective can lead to a proper solution. "Many blame the victim—[men] say, 'But what you don't understand, these women are pros who know what they're doing and go after men . . . [y]ou'd be hard pressed to convince these men that it's not their handsomeness and charm that's got these women chasing them, but it's their pocketbook.'"¹⁶⁸ In theory, the salary paid to UN Peacekeepers should incentivize personnel to act in accordance with the Peacekeeping policies. A finding of wrongdoing would, in effect, jeopardize that income.¹⁶⁹ Prince Zeid concluded, in his report, that threatening to garnish wages might make Peacekeepers act in accordance with

165. Defeis, *supra* note 28, at 188.

166. See Sweetser, *supra* note 31, at 1668.

167. *Id.* at 1668-69.

168. Martin, *supra* note 7, at 9.

169. Ndulo, *supra* note 15, at 145. There is a correlation between the income the Peacekeeper is receiving and the economic status of civilians in the place of conflict that leads to the sexual exploitation and abuse of women. Both young women and girls are prostituting themselves in exchange for the Peacekeeper's money and his access to resources. *Id.*

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the policy.¹⁷⁰ Furthermore, in terms of the solution proposed here, it also provides an incentive for Peacekeepers to provide a DNA sample as a prerequisite of accepting a job that is high salaried. If Peacekeepers are made aware that a condition of their eligibility for Peacekeeping work is to provide a DNA sample to a genetic database, they might comply, knowing that it is just a step to receive more income by being part of the mission. Additionally, fathers cannot claim ignorance of misconduct policies. Since the 2005 Zeid Report, Sexual Exploitation Training is mandatory for all Peacekeepers when arriving to a mission in a host state.¹⁷¹ It is also required that all TCCs facilitate pre-deployment training.¹⁷² Peacekeepers “are in a position of trust with regard to the local population and additionally their economic situation is vastly superior to [that of the] local people.”¹⁷³

V. PROPOSED SOLUTION

Notwithstanding prior attempts to address the problem, sexual exploitation and abuse of civilians by UN Peacekeepers continues to be an ongoing problem. For example, it was recently reported in Bangui, Central African Republic that since 2014, 42 local civilians (mostly underage girls) were victims of sexual abuse and exploitation by Peacekeepers.¹⁷⁴ As a result, “[i]n August [2015], the top [UN] official [there] was fired for failing to take enough action on abuse cases. Nearly 1,000 troops whose units have been tied to abuse have been expelled, or will be soon.”¹⁷⁵ Furthermore, though the UN, Host States and TCCs recognize the issue and have tried to implement policies and procedures to address it, there still needs to be more intervention to hold the Peacekeepers accountable for engaging in sexual misconduct.

For decades the United Nations has recorded allegations of sexual exploitation and abuse by UN Peacekeepers against civilians who are receiving aid and assistance as a result of domestic or regional conflict, natural disaster or other humanitarian crises.¹⁷⁶ Security Council Resolutions and disciplinary policies have sought to address the problem, but they have fallen short in practice.¹⁷⁷ In addition, the disciplinary pro-

170. Martin, *supra* note 7, at 10.

171. Stern, *supra* note 78, at 12.

172. *Id.*

173. Ndulo, *supra* note 15, at 146.

174. Sieff, *supra* note 142, at 3.

175. *Id.*

176. See NEUDORFER, *supra* note 2, at 9.

177. See *Role of the Security Council*, *supra* note 77.

cesses and enforcement of UN Standards of Conduct have been inadequate and focus mostly on criminal prosecution.¹⁷⁸ This paper addresses the Peacekeeping babies left behind by UN Peacekeepers when the Peacekeeper's deployment is over and not criminal punishment. The proposed solution recommends that fathers be held civilly liable for their actions and be required to assist the women, now mothers, whom they sexually abused and exploited.

The first issue is establishing and addressing who should be responsible for providing financial support to mothers and their children.

To date, the focus of law in regards to this problem has been to emphasize that the U.N. cannot itself try peacekeepers for sexual or other misconduct and to commend the U.N. for remanding errant peacekeepers to their sending states, which exercise jurisdiction over them. What has gone unexamined are the legal and socio-legal structures of sending states whose peacekeepers commit sexual and other crimes while deployed to a U.N. peacekeeping mission.¹⁷⁹

Though it would be optimal if the United Nations had jurisdiction over the Peacekeepers that are carrying out its mission, it is unrealistic to include that as a proposed solution. Instead, the UN continues to use the same agreements between the UN and the Host State and the UN and the TCCs as it has for decades, which puts limitations on accountability because of jurisdiction and immunity issues.¹⁸⁰

Unless these agreements adopt new procedures for holding Peacekeepers responsible for their illicit behavior against civilians, in particular addressing the needs for victims and Peacekeepers' babies, change will never happen. For example, the Model SOFA is accepted as law even where there is no actual agreement in place.¹⁸¹ TCCs are responsible for disciplining their Peacekeepers, but without evidence of the Peacekeepers' transgressions there are huge barriers to carrying out justice and punishing soldiers.¹⁸² Moreover, the UN does not ensure that discipline is carried out because once the Peacekeepers return to their home state, the UN's job is finished.¹⁸³ Without requiring the TCC to report back to the Host State, victims are left without closure and are vulnerable.¹⁸⁴ Furthermore, the Model SOFA fails to address civil liability and fails to hold Peacekeepers, now fathers, responsible for the child that they left behind

178. Martin, *supra* note 7, at 6.

179. Harrington, *supra* note 23, at 219.

180. Petrova, *supra* note 17.

181. See NEUDORFER, *supra* note 2, at 13.

182. Ferstman, *supra* note 18, at 3-4.

183. NEUDORFER, *supra* note 2, at 58-59.

184. See Chiyuji Aoi, *supra* note 52, at 165.

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when they return to their respective TCCs.¹⁸⁵ “There is currently no UN requirement that [P]eacekeepers care for or acknowledge the children they father.”¹⁸⁶ Amending the Model SOFA to include procedures for holding those Peacekeepers who sexually abuse and exploit civilians accountable would address this problem. As such, the SOFA should be changed to include that all TCCs’ Peacekeepers provide a DNA sample to be kept in a genetic database. This system would allow victims to get the relief that they need by easily determining paternity, identifying the Peacekeepers and establishing a system for holding them accountable (i.e. with a child support order) after their deployment ends.

Procedures must be adopted through which mothers can pursue financial support to care for their child. The UN Peacekeeping forces should be responsible for providing child support payments. The Host State and Peacekeeper Contributing State can arrange an agreement whereby TCCs issue and enforce child support orders against their nationals. These monies would be paid to the Host States and then disbursed to victims. This system of accountability might serve to deter UN Peacekeepers from sexually abusing or exploiting females because their DNA is on record. If caught, they will be banned from participating in future missions. It would also serve as an incentive for victims to come forward with claims of sexual abuse and exploitation without fearing that they will lose resources provided by the UN. Finally, as previously noted, the investigation process for allegations of sexual abuse and Peacekeepers’ misconduct entails many levels of authority.¹⁸⁷ Victims are often left in the dark as to whether the perpetrator was punished or even if their allegations were processed and investigated.¹⁸⁸ Improving communication with, and providing interim relief to, victims during the investigation would be helpful. Though it is understandable that investigations of allegations take time, the pregnant mother needs support to provide prenatal care to her child. The proposed solution is for the United Nations to establish a fund, paid into by the TCCs and Host States, and the proceeds given to victims once it is established that they are victims of sexual misconduct. Having the TCCs and Host States pay into the fund should motivate them to assist both the United Nations and the Host State in identifying the father and holding him responsible for child support payments.

It is understandable that TCCs might be reluctant to enter into agreements and to adhere to these recommendations because they have to pay

185. Martin, *supra* note 7, at 12.

186. Harrington, *supra* note 23, at 232.

187. See Deen-Racsmany, *supra* note 46, at 322.

188. Defeis, *supra* note 28, at 207.

into an interim fund while paternity is figured out and child support orders are put into place. However, proving paternity claims is “a delicate step, as countries that contribute UN troops might not welcome a practice that could prove not only fatherhood but wrongdoing.”¹⁸⁹ However, this paper reveals that the poor conduct of Peacekeepers “undermines” UN Peacekeeping Operations.¹⁹⁰ In response, there needs to be immediate change in policies and procedures to hold fathers accountable and to deter further Peacekeepers from taking advantage of the civilians.

CONCLUSION

This note proposes a solution that addresses the ongoing problem of sexual abuse and exploitation of civilians by UN Peacekeepers against the civilians they were sent to protect. In particular, it focuses on holding fathers accountable for the babies that they leave behind when their deployment ends. The solution has three parts: (1) revising the Model Status of Forces Agreement to include a genetic database (requiring Peacekeepers to provide DNA samples); (2) an agreement between the Host States and TCCs, where TCCs issue and enforce child support orders that are paid to mothers through the Host States; and (3) a United Nations’ interim compensation fund, funded by TCCs and Host States, to assist mothers until fathers are identified and child support payments are ordered. These measures are interdependent, requiring that TCCs, Host States and the United Nations do their part in ensuring that fathers are held financially responsible for their children and that justice is served for the victims.

189. Cara Anna, *‘Peacekeeper Babies’ an Unintended Consequence of Sending in the United Nations*, ASSOCIATED PRESS (June 13, 2015), available at <http://news.nationalpost.com/news/world/Peacekeeper-babies-an-unintended-consequence-of-sending-in-the-united-nations> (last visited Nov. 13, 2016).

190. Stern, *supra* note 78, at 8.