

UNITED NATIONS PEACEKEEPERS CAN DO NO WRONG:

HOW BLUE HELMETS ACHIEVED IMMUNITY FOR SEXUAL ABUSE IN CÔTE D’IVOIRE AND HOW TO
ENSURE ACCOUNTABILITY IN THE FUTURE

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TABLE OF CONTENTS

INTRODUCTION 1

I. UNITED NATIONS POWER TO DEPLOY PEACEKEEPING MISSIONS 5

II. THE CASE STUDY OF CÔTE D’IVOIRE: A TALE OF TWO REGIONS..... 11

 A. The War and the Mandate 12

 B. The Abuses and the Responses..... 14

III. IMMUNITY AND INJUSTICE FOR ALL: HOW UN LAWS PROTECT BLUE HELMET CRIMINALS 18

 A. The United Nations Can Do No Wrong: How Sovereign Immunity Expanded to International Organizations..... 19

i. The United Nations Charter, the Convention on the Privileges and Immunities of the United Nations, and SOFAs 19

ii. Expanding the Rubber Band To its Edge: Extension of Immunity to the United Nations 21

 B. Limitations to Immunity: Accountability Measures for United Nations Peacekeepers 24

IV. SOLUTIONS FOR COMBATting SEXUAL ABUSE IN FUTURE PEACEKEEPING MISSIONS..... 29

 A. A Preventive Measure: Know Your Troops and Train Your Troops..... 29

 B. An Administrative Measure: Big Brother is Watching 33

CONCLUSION..... 35

INTRODUCTION

On a December night, eight men dressed in camouflage entered “Lisa’s” home in Abobo, Côte d’Ivoire.¹ She was twenty-five at the time, and was holding her three-year-old baby when the men broke down her door and attacked her husband in front of her.² She remembers, “They grabbed my child out of my arms and threw him at the door, then pulled me into the bedroom,

¹ HUMAN RIGHTS WATCH, “THEY KILLED THEM LIKE IT WAS NOTHING”: THE NEED FOR JUSTICE FOR CÔTE D’IVOIRE’S POST-ELECTION CRIMES 37 (2011), *available at* <http://www.hrw.org/sites/default/files/reports/cdi1011WebUpload.pdf>. “Lisa” and “Elizabeth” are pseudonyms to protect the identity of the victims and their families.

² *Id.*

ripped off my clothes and lay on me.”³ Her husband was killed by gunshot in the next room during her attack.⁴ Not far away in a field near her home, a thirteen-year-old Ivoirian girl named “Elizabeth” suffered a similar fate.⁵ Ten uniformed men grabbed her from her house and threw her to the ground. She was gang raped with extreme brutality, after which the men left her in the field to die.⁶ Elizabeth survived, but she did not report the crime, for fear that her parents would no longer accept her in their home.⁷

The two stories are similar, but Lisa and Elizabeth were not victims of the same crime. Lisa’s attackers wore camouflage uniforms: they were pro-Gbagbo Ivoirian militiamen protesting during the country’s post-election crisis.⁸ Elizabeth’s attackers wore blue helmets: they were Pakistani peacekeeping troops working on behalf of the United Nations Operation in Côte d’Ivoire.⁹ Lisa was a victim of war, Elizabeth a victim of peace.

In modern warfare, “[i]t is more dangerous to be a woman than to be a soldier.”¹⁰ Rape as a tool of war is not a new phenomenon.¹¹ However, a newer phenomenon is sexual violence as a consequence of peace. In many peacekeeping missions, particularly in West Africa, there have

³ *Id.*

⁴ *Id.*

⁵ *Peacekeepers “Abusing Children,”* BBC NEWS (May 27, 2008, 9:46 UK), <http://news.bbc.co.uk/2/hi/7420798.stm>.

⁶ *Id.*

⁷ *Id.* For additional information on why these types of crimes tend to go unreported, see SAVE THE CHILDREN UK, NO ONE TO TURN TO: THE UNDER-REPORTING OF CHILD SEXUAL EXPLOITATION AND ABUSE BY AID WORKERS AND PEACEKEEPERS 12-14 (2008).

⁸ HUMAN RIGHTS WATCH, *supra* note 1, at 26-33.

⁹ BBC NEWS, *supra* note 5. For information on the post-election crisis in Côte d’Ivoire, see generally HUMAN RIGHTS WATCH, TURNING RHETORIC INTO REALITY ACCOUNTABILITY FOR SERIOUS INTERNATIONAL CRIMES IN CÔTE D’IVOIRE (2013); John F. Murphy, *Responsibility to Protect (R2P) Comes of Age? A Skeptic’s View*, 18 ILSA J. INT’L & COMP. L. 413 (2012).

¹⁰ NOBEL WOMEN’S INITIATIVE, WAR ON WOMEN: TIME FOR ACTION TO END SEXUAL VIOLENCE IN CONFLICT 2 (2011), available at http://www.nobelwomensinitiative.org/wp-content/archive/stories/Conference_Ottawa_Women_Forging_a_New_Security/war-on-women-web.pdf (quoting Major General Patrick Cammaert, former Deputy Force Commander of the United Nations Mission to the Democratic Republic of Congo).

¹¹ See, e.g., Bülent Diken, *Becoming Abject: Rape as a Weapon of War*, 11 J. BODY & SOCIETY 111 (2005); Donna Pankhurst, *Sexual Violence in War*, in GENDER MATTERS IN GLOBAL POLITICS: A FEMINIST INTRODUCTION TO INTERNATIONAL RELATIONS (2d ed., 2015); MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA (Alexandra Stiglmayer ed., 1994).

been disturbing reports of rape, sexual violence, forced prostitution, and other crimes against women.¹² United Nations peacekeeping forces are deployed to countries where the rule of law is noticeably damaged, and many have chosen to take advantage of the local population's weakened state through exploitation or force.¹³ Although peacekeeping forces have committed crimes against women, the legal standing of the United Nations and its agents is a confounding gray space of impunity and hypocrisy.¹⁴ The official United Nations response of "boys will be boys" has improved to a policy of zero tolerance, but the organization is still plagued with accusations of sexual misconduct by peacekeeping forces, among other abuses.¹⁵ Using Côte d'Ivoire as a case study, this Article will publicize the stories of the victims of peace and will formulate solutions to increase accountability and to reduce instances of sexual abuse in future peacekeeping missions.

Sexual abuse allegations against peacekeepers and aid workers became an international issue in late 2001 after the United Nations High Commissioner for Refugees (UNHCR) and Save

¹² For commentary on the perversion of the peacekeeper role generally, see Alexandra R. Harrington, *Victims of Peace: Current Abuse Allegations Against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future*, 12 ILSA J. INT'L & COMP. L. 125 (2005) ("What is most bothersome to this author is that the history of the peacekeepers has such a pronounced dichotomy between saving people and countries and acting as criminals. No matter how the U.N. Charter provisions are interpreted, the wording evinces the idea that some kind of security force was necessary to protect the world from the ravages of war and human atrocities, and indeed many peacekeepers have given their lives for this goal. However, those charged with carrying out the administrative charge created by the U.N. Charter have failed to protect both the intent of the U.N. Charter's framers and those who find themselves in the midst of war and chaos, and have allowed the peacekeepers to become victimizers.").

¹³ *Id.* at 134 (noting that "social upheaval and instability, coupled with the economic position of the peacekeepers, creates an environment where peacekeepers can easily prey on those they should be protecting"); Secretary-General, Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation Into Sexual Exploitation of Refugees by Aid Workers in West Africa, Supp. (No. 1), at 1, 3, U.N. Doc. A/57/1 (Oct. 11, 2002) ("Sexual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for. Men, women, and children displaced by conflict or other disasters are among the most vulnerable people on earth. They look to the United Nations and its humanitarian partners for shelter and protection.").

¹⁴ See *infra* Part III.

¹⁵ Colum Lynch, *U.N. Faces More Accusations of Sexual Misconduct; Officials Acknowledge "Swamp" of Problems and Pledge Fixes Amid New Allegations in Africa, Haiti*, WASH. POST, Mar. 13, 2005, at A22 (describing a United Nations official's response to sexual abuse allegations in Cambodia in 1990 as "[b]oys will be boys"). Other abuses reported include murder, torture, and pillage, all of which constitute violations of international humanitarian law. Richard D. Glick, *Lip Service to the Laws of War: Humanitarian Law and United Nations Armed Forces*, 17 MICH. J. INT'L L. 53, 53 & n.1 (1995).

the Children conducted a joint study on sexual exploitation of refugee communities in Guinea, Liberia, and Sierra Leone.¹⁶ The study uncovered allegations of abuse by United Nations peacekeeping forces, international and local nongovernmental organizations, and government agencies.¹⁷ The majority of victims involved were girls between the ages of thirteen and eighteen years old.¹⁸ In response to the disturbing findings of the study, the General Assembly adopted Resolution 57/306: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa.¹⁹ The Resolution tasked the Secretary-General with investigating and reporting sexual exploitation and related offenses by peacekeeping personnel.²⁰ Less than one year after the Secretary-General reported his results, however, new allegations of sexual misconduct surfaced in West Africa.²¹ The problem of sexual abuse in peacekeeping missions was already pervasive, and over ten years later, there is still no end in sight.

This Article will begin in Part I with an introduction to the sources of United Nations authority to deploy peacekeeping operations. Focusing on Chapter VII missions in particular, this Article will detail the evolution of peacekeeping missions since the post-World War II era, and will provide general information on the organizational options for peacekeeping mandates available to the Security Council at headquarters and to the Department of Peacekeeping Operations on the ground. Next, Part II will explore one peacekeeping mission in further detail: the United Nations Operation in Côte d'Ivoire (UNOCI). Providing a historical context, this Part will offer concrete examples of how United Nations peacekeeping troops engaged in sex crimes

¹⁶ U.N. HIGH COMM'R FOR REFUGEES (UNHCR) & SAVE THE CHILDREN-UK, NOTE FOR IMPLEMENTING AND OPERATIONAL PARTNERS ON SEXUAL VIOLENCE & EXPLOITATION: THE EXPERIENCE OF REFUGEE CHILDREN IN GUINEA, LIBERIA AND SIERRA LEONE (2002), *available at* <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.pdf?fid=3c7cf89a4&tbl=PARTNERS>.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

¹⁹ G.A. Res. 57/306, U.N. Doc. A/RES/57/306 (Apr. 15, 2003).

²⁰ *Id.*; *see also* 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, 141-42 (2009).

²¹ *See* Ndulo, *supra* note 20, at 142.

and the respective punishments and policy changes, or lack thereof, when the United Nations became aware of such abuses.

After exposing examples of atrocities in Part II, Part III will detail the historical source and policy debate for granting immunity to international organizations, with a narrow focus on the United Nations. This Part will analyze the immunity agreements under the United Nations Model Status of Forces Agreement for Peacekeeping Operations, the United Nations Charter, and the Convention on the Privileges and Immunities of the United Nations. In addition to analyzing the foundation for immunity, this Part will also explain the textual limitations of the doctrine. Although the United Nations has guidelines for accountability in situations where blue helmets commit crimes in host countries, this Article will conclude—with little controversy—that existing criminal justice mechanisms create an environment of impunity for the United Nations and its agents. With the flaws of the current structure exposed and explained, Part IV will conclude with recommendations to deter instances of abuse in the future, including improved training and vetting procedures for United Nations peacekeeping troops and administrative peer review measures. This Article focuses on sex crimes committed by United Nations peacekeeping troops in Cote d'Ivoire specifically, but the policy recommendations apply to civilian police forces, military observers, and all other United Nations peacekeeping staff who also have been accused of violence against civilian populations in other missions.

I. UNITED NATIONS POWER TO DEPLOY PEACEKEEPING MISSIONS

Before addressing the specific peacekeeping mission in Côte d'Ivoire and critiquing its sexual abuse scandals, this Part provides a background of the Security Council's authority to deploy peacekeeping missions and traces the historical development of such mandates from passive mediators to active peacebuilders in the late twentieth century.

Beginning with a textual analysis, the United Nations Charter does not contain the phrase “peacekeeping mission” anywhere in the document.²² As of 2015, however, the United Nations reported a completed fifty-five missions²³ and sixteen currently active missions, covering every region of the world.²⁴ The approved budget for United Nations peacekeeping operations from July 2014 to June 2015 totaled 7.06 billion U.S. dollars,²⁵ with the United States contributing approximately twenty-eight percent of all peacekeeping expenses from 2013 to 2015.²⁶ These statistics indicate that, despite the lack of an explicit textual basis, peacekeeping missions have become one of the most significant tasks of the United Nations.

Although peacekeeping missions are not specifically authorized by the Charter, the enumerated purpose of the United Nations is to “maintain international peace and security,” which includes using “collective measures for the prevention and removal of threats to the peace.”²⁷ With this purpose in mind, the United Nations has pointed to three chapters in the Charter to provide textual justification for the deployment of peacekeeping operations: Chapter VI, which addresses “Pacific Settlement Disputes”; Chapter VII, which contains provisions related to “Action with Respect to the Peace, Breaches of the Peace, and Acts of Aggression”; and Chapter VIII, which permits the creation of regional arrangements and agencies for the

²² Joakim E. Parker, *Cultural Autonomy: A Prime Directive for the Blue Helmets*, 55 U. PITT. L. REV. 207, 225 (1993); *Mandates and the Legal Basis for Peacekeeping*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/pkmandates.shtml> (last visited Mar. 27, 2015).

²³ *Past Peacekeeping Operations*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/past.shtml> (last visited Mar. 7, 2015).

²⁴ *Current Peacekeeping Operations*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/current.shtml> (last visited Mar. 7, 2015). The Department of Peacekeeping Operations is currently active in Côte d’Ivoire, the Democratic Republic of the Congo, Afghanistan, Darfur, South Sudan, Haiti, Mali, Kosovo, Lebanon, and Liberia, to name a few. *Id.*

²⁵ G.A., Approved Resources for Peacekeeping Operations for the Period from 1 July 2014 to 30 June 2015, U.N. Doc. A/C.5/69/17 (Jan. 14, 2015).

²⁶ *Financing Peacekeeping*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/financing.shtml> (last visited Mar. 7, 2015).

²⁷ U.N. Charter art. 1, sec. 1.

maintenance of international peace and security.²⁸ Although the Security Council is not required to specify an exact Chapter of the Charter when authorizing a peacekeeping mission, it generally does include a source of law in the resolutions.²⁹

Chapter VII mandates have become the most important source of law in recent years, largely because the Security Council has cited it in some of its most recent Resolutions;³⁰ this includes Resolution 1528, which authorized the UNOCI.³¹ Although there is some debate concerning why the Security Council is favoring Chapter VII mandates, the Department of Peacekeeping Operations (DPKO) notes how Chapter VII is generally invoked in volatile post-conflict states where the occupying government is unable to maintain peace and security; consequently, citing the Chapter serves as a “statement of firm political resolve and a means of reminding the parties to a conflict and the wider United Nations membership of their obligation to give effect to Security Council decisions.”³²

In Chapter VII, Article 42 of the Charter authorizes the Security Council to deploy force in order to maintain or restore international peace and security.³³ Accordingly, Article 43 requires all member states to make armed forces, assistance, facilities, and other such measures

²⁸ See *Mandates and the Legal Basis for Peacekeeping*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/pkmandates.shtml> (last visited Mar. 7, 2015); U.N. DEP'T OF PEACEKEEPING OPERATIONS (DPKO), UNITED NATIONS PEACEKEEPING OPERATIONS: PRINCIPLES AND GUIDELINES 13 (2008); see also Harrington, *supra* note 12, at 130 (calling Chapter VII the “backbone of the inference that there should be a U.N. peacekeeping force established and maintained by the [United Nations Security Council]”).

²⁹ DPKO, *supra* note 28, at 13-14.

³⁰ James Sloan, *The Use of Offensive Force in U.N. Peacekeeping: A Cycle of Boom and Bust?*, 30 HASTINGS INT'L & COMP. L. REV. 385, 434 (2007) (“[E]xplicit Chapter VII authorizations were given to U.N. peacekeeping missions in all but one of the countries or regions where new missions were authorized since June 1999.”).

³¹ S.C. Res. 1528, U.N. SCOR, 4918th mtg., U.N. Doc. S/RES/1528 (2004).

³² DPKO, *supra* note 28, at 13-14.

³³ U.N. Charter art. 42.

available to the Security Council for these missions.³⁴ Together, these provisions form the foundation of the United Nations power to deploy armed combatants known as “blue helmets.”³⁵

The use of peacekeeping missions was not a popular tool until the end of the Cold War because, as with most United Nations activities, they require authorization through a Security Council resolution.³⁶ With the rise of nationalistic and ethnic rivalries worldwide and the veto power no longer a weapon in the communist/capitalist divide, the Security Council embraced the use of peace operations in the 1990s.³⁷ Resolutions traditionally detail the mandate, which may include anything from short-term conflict prevention to long-term peacekeeping projects.³⁸ Historically, the original mission of peacekeeping operations was “to ‘cool down’ the conflict, impede subsequent fighting, and allow the parties to reach a final peace agreement on their own.”³⁹ Eventually, the mandates became more ambitious, allowing United Nations peacekeeping staff to hold elections, engage in the peace process, and assist in humanitarian crisis management.⁴⁰ In its most extreme form, the United Nations has assumed the role of the

³⁴ *Id.* art. 43, sec. 1.

³⁵ See Nikola Krastev, *Behind the “Blue Helmets”—A Look at UN Peacekeepers*, RADIO FREE EUROPE (Apr. 6, 2015), http://www.rferl.org/content/Behind_The_Blue_Helmets__A_Look_At_UN_Peacekeepers/2090367.html.

³⁶ *Forming a New Operation*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/newoperation.shtml> (last visited Mar. 7, 2015); see Ndulo, *supra* note 20, at 129 (“The Cold War rivalries that prevented the deployment of peacekeepers have dissipated.”).

³⁷ Ndulo, *supra* note 20, at 129; Jennifer Murray, Note, *Who Will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina*, 34 COLUM. HUM. RTS. L. REV. 475, 475-76 (2003).

³⁸ DPKO, *supra* note 28, at 17-18. Within the peacekeeping category, projects may include disarmament, demobilization, and reintegration (DDR) of combatants; security sector reform; electoral assistance; and protection of human rights. *Id.* at 26.

³⁹ See Jaime Saura, *Lawful Peacekeeping: Applicability of International Humanitarian Law to United Nations Peacekeeping Operations*, 58 HASTINGS L.J. 479, 481 & n.10 (2007); see Ndulo, *supra* note 20, at 128-29 (describing how the United Nations Truce Supervision Organization (UNTSO), the first peacekeeping operation, was tasked with the sole responsibility of monitoring a ceasefire).

⁴⁰ Saura, *supra* note 39, at 481-82; see also Int’l Committee of the Red Cross, *Peacekeeping Operations: Statement to the United Nations* (2014), available at <https://www.icrc.org/en/document/peacekeeping-operations-icrc-statement-united-nations-2014#.VQCauE11a8>.

government in some states emerging from conflict; in the 1990s alone, examples of the latter mandate include missions in Cambodia, East Timor, and Kosovo.⁴¹

Creating a mandate is not an easy task. Because the Security Council tends to adopt a “broad brush” approach when planning an operation, mandate objectives often materialize as meaningless political prospects rather than concrete instructions.⁴² In Resolution 1528, for example, the Security Council instructed mission forces in Côte d’Ivoire “[t]o facilitate the free flow of people, goods and humanitarian assistance ... by helping to establish the necessary security conditions.”⁴³ When blue helmets attempt to implement such sweeping statements on the ground, a resource gap often emerges. As an extreme example of this phenomenon, Lieutenant General Babacar Gaye, Force Commander of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, noted that the mandate’s requirement for the protection of civilians far outweighed the available resources.⁴⁴ With only twenty thousand blue helmets on the ground covering a population of nearly sixty-five million, the mandate’s objective could not be performed as envisioned by the Security Council.⁴⁵ Understandably, the Security Council likely adopts the “broad brush” approach in order to cover the multitude of challenges that may arise in the post-conflict setting. The resulting problems with this strategy, however, illustrate one of many ways in which the United Nations struggles during the application stage of peacekeeping missions.

⁴¹ See Saura, *supra* note 39, at 481-82.

⁴² See *Security Council Briefed by Force Commanders of Missions in Liberia, Sudan, Haiti, Democratic Republic of Congo, Middle East Truce Supervision Organization*, UN.ORG (Aug. 6, 2010), <http://www.un.org/press/en/2010/sc10006.doc.htm>; *With Operations Overstretched, United Nations Must Find Innovative Ways To Tackle Modern Peacekeeping Challenges, Security Council Told During Thematic Debate*, UN.ORG (Jan. 23, 2009), <http://www.un.org/press/en/2009/sc9583.doc.htm>.

⁴³ S.C. Res. 1528, at ¶ 6(k), U.N. SCOR, 4918th mtg., U.N. Doc. S/RES/1528 (2004).

⁴⁴ *Security Council Briefed by Force Commanders of Missions*, *supra* note 42.

⁴⁵ *Id.*

Once the Security Council creates the mandate, the General Assembly must approve the budget and resources requested. The General Assembly is not involved in political decisions for peacekeeping operations, but they do have the power of the purse because “all UN Member States share the costs of peacekeeping.”⁴⁶ Once approved, the Secretary-General will appoint a Head of Mission⁴⁷ who—with assistance from the DPKO and the Department of Field Support (DFS)—plans the day-to-day operations of the mission, which includes political, military, operational, and administrative decisions.⁴⁸ When deployment occurs and the operation commences, the Secretary-General provides regular reports to the Security Council containing information on the implementation of the mandate.⁴⁹ The Security Council reserves the right to extend, amend, or end a mission at any time.⁵⁰

For the purpose of this Article, the most important actors in the peacekeeping process are the United Nations peacekeeping staff, which includes blue helmets, civilian police, and military observers. The United Nations has no standing army or police force available; consequently, it depends on the contributions of member states which may voluntarily contribute personnel for operations around the globe.⁵¹ In January 2015, the DPKO reported that 128 member states contributed 91,802 serving troops and military observers,⁵² the vast majority of them being men.⁵³ Before addressing specific examples of sexual abuse committed by United Nations

⁴⁶ *Role of the General Assembly*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/rolega.shtml> (last visited Mar. 7, 2015).

⁴⁷ *Department of Peacekeeping Operations*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/about/dpko> (last visited Mar. 7, 2015).

⁴⁸ *Id.*; Murray, *supra* note 37, at 479-80.

⁴⁹ *Forming a New Operation*, *supra* note 36; Harrington, *supra* note 12, at 131-32 (“The provision of troops and personnel is entirely voluntary on the U.N. member countries.”).

⁵⁰ *Role of the Security Council*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/tolesc.shtml> (last visited Mar. 7, 2015).

⁵¹ *Forming a New Operation*, *supra* note 36.

⁵² *About Us*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/about> (last visited Mar. 8, 2015).

⁵³ See REFUGEES INTERNATIONAL, MUST BOYS BE BOYS? ENDING SEXUAL EXPLOITATION AND ABUSE IN UN PEACEKEEPING MISSIONS (2005), available at http://www.un.org/en/pseataforce/docs/must_boys_be_boys_ending_sea_in_un_peacekeeping_missions.pdf.

peacekeeping forces and thus contributing to the United Nations' already damaged reputation, it is important to recognize that not all peacekeeping forces are criminals. In 1988, United Nations peacekeeping forces were awarded the Nobel Peace Prize for their valuable contributions as observers and negotiators in war-torn regions.⁵⁴ As of 2015, the United Nations successfully completed fifty-six peacekeeping mandates in Europe, Asia and the Pacific, the Middle East, the Americas, and Africa.⁵⁵ The impact and sheer magnitude of peacekeeping operations is impressive, but they are far from perfect. Accepting this reality and recognizing the United Nations' legal authority to establish peacekeeping missions, this Article will proceed with a case study of sex crimes committed by peacekeepers in Côte d'Ivoire.

II. THE CASE STUDY OF CÔTE D'IVOIRE: A TALE OF TWO REGIONS

Having explained the logistical requirements of establishing a peacekeeping mission, this Part applies the legal framework to one case study: the United Nations Operation in Côte d'Ivoire (UNOCI). Although this Article is limiting its analysis to one country, the reports of sexual abuse in Côte d'Ivoire are not isolated incidents. Rape, pedophilia, prostitution, and other forms of sexual exploitation and abuse have been reported in dozens of countries, including Angola, Bosnia and Herzegovina, Cambodia, East Timor, Eritrea, Kosovo, Liberia, Mozambique, Sierra Leone, and Somalia.⁵⁶ In March 2013, the United Nations Internal Oversight Services released an annual report, noting that “[s]exual exploitation and abuse remains a significant area

⁵⁴ Saura, *supra* note 39, at 479 (citing Press Release, The Norwegian Nobel Comm., The Nobel Peace Prize 1988 (Sept. 30, 1988)).

⁵⁵ *Past Peacekeeping Operations*, *supra* note 23.

⁵⁶ See, e.g., CARLA FERSTMAN, UNITED STATES INSTITUTE OF PEACE, CRIMINALIZING SEXUAL EXPLOITATION AND ABUSE BY PEACEKEEPERS 2 (2013), available at <http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf>; Owen Bowcott, *Report Reveals Shame of UN Peacekeepers*, THE GUARDIAN (Mar. 24, 2005, 9:43 PM), <http://www.theguardian.com/world/2005/mar/25/unitednations>.

of concern,” despite the United Nation’s policy of zero tolerance.⁵⁷ In April 2005, as allegations of sexual misconduct continued to surface, Under-Secretary-General for Peacekeeping Operations Jean-Marie Guéhenno declared, “If we fail . . . to approve decisive and visible steps to limit sexual abuse in UN peacekeeping, then it will have serious implications for the future of peacekeeping. I do not say this lightly.”⁵⁸ With this daunting prediction in mind, this Article will now tell the story of Côte d’Ivoire.

A. The War and the Mandate

Côte d’Ivoire’s 2002 civil war began in September when northern army officer Guillaume Soro led an attempted coup against incumbent President Laurent Gbagbo.⁵⁹ It was the sixth attempted coup in Côte d’Ivoire in less than three years.⁶⁰ The rebels, later reunited under the name Forces Nouvelles (FN),⁶¹ were protesting President Gbagbo’s favoritism towards his own ethnic group in the south, to the detriment of northern Ivoirians.⁶² The regional battle was temporarily subsided in 2003 with the signing of the Linas-Marcoussis Peace Agreement, but sporadic violence continued as the regional north/south divide remained an ethnic, religious, and geographic reminder of separation.⁶³ In 2007, President Gbagbo and FN leader Soro signed the

⁵⁷ Office of Internal Oversight Services (OIOS), Activities of the Office of Internal Oversight Services on Peacekeeping Operations for the Period from 1 January to 31 December 2012, at 9-10, U.N. Doc. A/67/297 (part II) (Mar. 12, 2013); Catherine E. Sweetser, *Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel*, 83 N.Y.U. L. REV. 1643, 1644 (2008).

⁵⁸ REFUGEES INTERNATIONAL, *supra* note 53, at i (quoting Address to the Special Committee on Peacekeeping Operations (Apr. 4, 2005)).

⁵⁹ *Ivory Coast: Conflict Profile*, PEACE DIRECT (Mar. 2015), <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile>; Abu Bakarr Bah, *Democracy and Civil War: Citizenship and Peacemaking in Côte d’Ivoire*, 109 AFRICAN AFFAIRS 597, 604 (2010).

⁶⁰ *See Ivory Coast Conflict*, GLOBALSECURITY.ORG (July 11, 2011, 3:28 ZULU), <http://www.globalsecurity.org/military/world/war/ivory-coast-2002.htm>.

⁶¹ AMNESTY INTERNATIONAL, COMMUNITIES SHATTERED BY ARMS PROLIFERATION AND ABUSE IN COTE D’IVOIRE 5 (2013), available at <https://www.amnesty.org/download/Documents/8000/afr310022013en.pdf>.

⁶² PEACE DIRECT, *supra* note 59.

⁶³ *Id.*; Giulia Piccolino, *David Against Goliath in Côte d’Ivoire? Laurent Gbagbo’s War Against Global Governance*, 111 AFRICAN AFFAIRS 1, 8 (2011).

Ouagadougou Agreement, naming Soro the prime minister and outlining various post-conflict reform projects, which included free and fair elections.⁶⁴

After various delays and an extended rule, President Gbagbo held elections in 2010 and lost to his opponent, Alassane Ouattara.⁶⁵ Ouattara's victory was recognized by the African Union, the Economic Community of West African States (ECOWAS), and the United Nations.⁶⁶ However, President Gbagbo, campaigning on the slogan, "we win or we win," appealed to his allies in the Constitutional Council to change the election results in his favor.⁶⁷ After Gbagbo obtained a declaration of victory from the highest court in the country, violence erupted between the army, loyal to Gbagbo, and FN forces, loyal to Ouattara.⁶⁸ After months of extreme violence, United Nations and French military troops arrested President Gbagbo in his home and left the Ivoirian government in Ouattara's control.⁶⁹ During the post-election crisis, approximately 3,000 people died; 35,000 people were internally displaced; and 200,000 people, mainly Gbagbo supporters, fled across the border into neighboring Liberia and Ghana.⁷⁰ Amnesty International claims that both sides of the conflict committed war crimes and crimes against humanity, including unlawful killings and sexual violence.⁷¹

In 2003 following the signing of the Linas-Marcoussis Peace Agreement and before the election crisis, then-President Gbagbo asked the Security Council to authorize the creation of a

⁶⁴ PEACE DIRECT, *supra* note 59.

⁶⁵ Azad Essa, *Côte d'Ivoire: The Forgotten War?*, AL JAZEERA (Apr. 1, 2011, 18:49 GMT), <http://www.aljazeera.com/indepth/features/2011/04/20114116296998447.html>. See generally Thomas J. Bassett, *Winning Coalition, Sore Loser: Côte d'Ivoire's 2010 Presidential Elections*, 110 AFRICAN AFFAIRS 469 (2011).

⁶⁶ Essa, *supra* note 65; INTERNATIONAL CRISIS GROUP, CÔTE D'IVOIRE: IS WAR THE ONLY OPTION? ii (2011), available at <http://www.crisisgroup.org/~media/Files/africa/west-africa/cote-divoire/171%20Cote%20dIvoire%20-%20Is%20War%20the%20only%20Option%20ENGLISH.pdf>.

⁶⁷ INTERNATIONAL CRISIS GROUP, *supra* note 66, at 3.

⁶⁸ AMNESTY INTERNATIONAL, *supra* note 61, at 4.

⁶⁹ TOM OGWANG, *THE ROOT CAUSES OF THE CONFLICT IN IVORY COAST 2* (2011).

⁷⁰ INTERNATIONAL CRISIS GROUP, *A CRITICAL PERIOD FOR ENSURING STABILITY IN CÔTE D'IVOIRE 2* (2011); AMNESTY INTERNATIONAL, *supra* note 61, at 3.

⁷¹ AMNESTY INTERNATIONAL, *supra* note 61, at 3-4.

peacekeeping operation in Côte d'Ivoire.⁷² The Security Council responded with Resolution 1528, which established the UNOCI for an initial period of one year and a military deployment of 6,240 troops and 200 military observers.⁷³ The original mandate's main objectives included monitoring the ceasefire; implementing disarmament, demobilization, reintegration, and reparation programs; and restoring the national civilian police force.⁷⁴ The Security Council extended and modified the mandate on several occasions; most notably, an additional 2,400 blue helmets were deployed after the election crisis in November 2010 to assist in the cessation of hostilities between the warring factions.⁷⁵ The most recent change occurred in June 2014, when the Security Council extended the UNOCI's mandate until June 2015 and reduced military personnel to 5,245 troops and 192 military observers.⁷⁶ Approximately fifty-seven different member states donated military and police personnel to Côte d'Ivoire in the past ten years.⁷⁷

B. The Abuses and the Responses

Although sexual abuse is extremely underreported,⁷⁸ there are enough publicized stories of violations in Côte d'Ivoire by United Nations peacekeeping troops to raise alarm. According to a Save the Children field study, the following types of child sexual abuse and exploitation were reported by Ivoirians: trading sex for food and other non-monetary items or services, forced

⁷² S.C. Res. 1528, *supra* note 43.

⁷³ *Id.* at ¶¶ 1-2.

⁷⁴ *Id.*

⁷⁵ *UNOCI Background*, UN.ORG, <http://www.un.org/en/peacekeeping/missions/unoci/background.shtml> (last visited Mar. 8, 2015).

⁷⁶ S.C. Res. 2162, U.N. SCOR, 7207th mtg., U.N. Doc. S/RES/2162 (2014).

⁷⁷ *UNOCI Facts and Figures*, UN.ORG, <http://www.un.org/en/peacekeeping/missions/unoci/facts.shtml> (last visited Mar. 8, 2015). Donating countries include Bangladesh, Benin, Bolivia, Brazil, Cameroon, Chad, China, Ecuador, Egypt, El Salvador, Ethiopia, France, Gambia, Ghana, Guatemala, Guinea, India, Ireland, Jordan, Malawi, Morocco, Namibia, Nepal, Niger, Nigeria, Pakistan, Paraguay, Peru, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia, Spain, Thailand, Togo, Tunisia, Uganda, Ukraine, Uruguay, Yemen, Zambia, and Zimbabwe. *Id.*

⁷⁸ See CORINNA CSÁKY, SAVE THE CHILDREN (UK), NO ONE TO TURN TO: THE UNDER-REPORTING OF CHILD SEXUAL EXPLOITATION AND ABUSE BY AID WORKERS AND PEACEKEEPERS 11 (2008) ("Clearly there is significant disparity between the low levels of abuse cited in these statistics and the high levels suggested in field investigations and other evidence. As we shall go on to examine, it is very likely that this is linked with a large-scale under-reporting of abuses.") (emphasis added); Ndulo, *supra* note 20, at 143.

sex, verbal sexual abuse, child prostitution, child pornography, sexual slavery, and indecent sexual assault.⁷⁹ The vast majority of abuses recorded in this study identified United Nations peacekeeping troops as the most likely perpetrators, with some Ivoirians identifying peacekeepers as “the only perpetrators within their communities.”⁸⁰

Although the general investigations are troubling, the specific reports of sexual abuse and exploitation in Côte d’Ivoire are astounding. In the town of Bouaké, the United Nations began investigating allegations of sexual abuse in 2007 after receiving widespread reports of Moroccan soldiers having sex with “a large number” of underaged girls.⁸¹ The entire battalion of eight hundred troops was confined to its barracks during the investigation.⁸² Similarly, in a document from the United States Embassy in the Ivory Coast, a diplomat reported that United Nations peacekeepers from Benin “coerced underaged girls to trade sex for food” in the town of Toulepleu. The document also noted that parents encouraged their daughters to provide sexual favors to peacekeepers in order to provide for their families.⁸³ One year later, the United Nations confirmed that sixteen Beninese peacekeepers were repatriated and barred from serving with the United Nations due to their sexual misconduct.⁸⁴

Misconduct reports became so regular that the Secretary-General included a routine section in most of his reports to the Security Council entitled, “Personnel Conduct and Discipline.” As early as 2005, the Secretary-General noted that a policy group on sexual

⁷⁹ CSÁKY, *supra* note 78, at 5.

⁸⁰ *Id.* at 8.

⁸¹ See VERONICA PATIENCE FYNN, LEGAL DISCREPANCIES: INTERNAL DISPLACEMENTS OF WOMEN AND CHILDREN IN AFRICA 37 (2010); Claudia Parsons, *Moroccan UN Troops Accused of Abuse in Ivory Coast*, REUTERS (July 20, 2007 5:35 PM), http://www.reuters.com/article/2007/07/20/idUSN20327686._CH_.2400.

⁸² See Parsons, *supra* note 81; *UN Probes “Abuse” in Ivory Coast*, BBC NEWS (July 23, 2007, 4:26 PM), <http://news.bbc.co.uk/2/hi/africa/6909664.stm>.

⁸³ Laura Burke, *WikiLeaks: UN Peacekeepers Traded Food for Sex*, HUFFINGTON POST (Nov. 1, 2011, 5:12 AM), http://www.huffingtonpost.com/2011/09/01/wikileaks-un-peacekeepers_n_944917.html.

⁸⁴ *Id.*

exploitation and abuse was established to monitor and to combat peacekeeper violations.⁸⁵ One year later, the UNOCI created a hotline with the United Nations Conduct and Discipline Unit to facilitate reporting for these notoriously underreported crimes;⁸⁶ this development, albeit positive, shows that the United Nations understood the widespread prevalence of sexual abuse committed by their personnel in Côte d’Ivoire. Official reports to the Security Council mention some investigative statistics: In June 2006, twenty-four United Nations peacekeepers, including sixteen civilian, three police, and five military personnel, were being investigated or were undergoing disciplinary procedures for misconduct.⁸⁷ Of these cases, one civilian and one police employee were reprimanded and one allegation was dismissed.⁸⁸ The United Nations also investigated serious allegations of sexual exploitation and abuse in the towns of Bouaké and Logoualé. The investigations’ results were distributed to the troop-contributing countries “for consideration and appropriate action,” although the United Nations itself did not impose any disciplinary sanctions.⁸⁹

To the credit of the United Nations, the Secretary-General did take steps to combat sexual abuse in Côte d’Ivoire. As of 2007, over forty-five percent of UNOCI senior managers “received targeted training on their obligation and responsibility to prevent acts of sexual exploitation and abuse by personnel under their supervision.”⁹⁰ Thousands of lower-level United Nations agents also received training, as well as information about the United Nation’s zero tolerance policy for

⁸⁵ Secretary-General, Fifth Progress Report on the United Nations Operation in Côte d’Ivoire, at 15, U.N. Doc. S/2005/398 (June 17, 2005).

⁸⁶ Secretary-General, Tenth Progress Report on the United Nations Operation in Côte d’Ivoire, at 14, U.N. Doc. S/2006/821 (Oct. 17, 2006).

⁸⁷ Secretary-General, Ninth Progress Report on the United Nations Operation in Côte d’Ivoire, at 11, U.N. Doc. S/2006/532 (July 17, 2006).

⁸⁸ *Id.*

⁸⁹ Secretary-General, Twentieth Progress Report on the United Nations Operation in Côte d’Ivoire, at 11, U.N. Doc. S/2009/196 (Apr. 13, 2009).

⁹⁰ Secretary-General, Twelfth Progress Report on the United Nations Operation in Côte d’Ivoire, at 12, U.N. Doc. S/2007/133 (Mar. 8, 2007).

such conduct. According to a Secretary-General Progress Report, the UNOCI began conducting mandatory training for personnel on the prevention of sexual exploitation and abuse in 2004.⁹¹ It reported, “Between September 2004 and February 2005, 32 training sessions on sexual exploitation and abuse awareness and prevention were organized by the Mission, involving 1,300 personnel from all Mission components.”⁹² Beyond preventative training efforts, the United Nations also deployed full-time conduct and discipline officers as part of the UNOCI mission.⁹³ In addition to these extensive internal procedures, the United Nations made efforts to inform the locals of their rights against peacekeeper abuse through public awareness campaigns. Partnering with civil society organizations, United Nations representatives circulated standards of conduct throughout Côte d’Ivoire to clarify the illegality of certain peacekeeper conduct.⁹⁴

The problem, however, is that these efforts have been inadequate. In an interview with Save the Children, a teenage Ivoirian girl stated, “We have never heard of anyone reporting the cases of abuse.”⁹⁵ Most victims do not report peacekeeper violations because they fear losing the material assistance such arrangements provide.⁹⁶ In other cases, victims are not aware of their rights. Despite the United Nations public awareness campaigns, one Ivoirian noted, “We don’t know our rights in the village.”⁹⁷ Additional reasons cited include fear of retaliation, lack of knowledge on how to report, and lack of faith in the response.⁹⁸ Moreover, even though supervisors are responsible for reporting violations of their subordinates, senior officials are not

⁹¹ Secretary-General, Third Progress Report on the United Nations Operation in Côte d’Ivoire, at 10, U.N. Doc. S/2004/962 (Dec. 9, 2004).

⁹² Secretary-General, Fourth Progress Report on the United Nations Operation in Côte d’Ivoire, at 15, U.N. Doc. S/2005/186 (Mar. 18, 2005).

⁹³ Security Council Report, Update Report No. 3: Sexual Exploitation and Abuse by UN Peacekeeping Personnel (2005), available at <http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTIsG-b-1429245.php?print=true>.

⁹⁴ Secretary-General, Eighteenth Progress Report on the United Nations Operation in Côte d’Ivoire, at 13, U.N. Doc. S/2008/645 (Oct. 13, 2008).

⁹⁵ CSÁKY, *supra* note 78, at 12.

⁹⁶ *Id.*

⁹⁷ *Id.* at 13.

⁹⁸ *Id.* at 13-14.

always aware of their subordinates' conduct. One teenage Ivoirian boy claimed, "The peacekeepers hide it from their supervisors and their friends ... Because when this kind of thing happens you have to keep it confidential."⁹⁹

Placing the Ivoirian abuses in a larger framework, between 2004 and 2006, the United Nations disciplined only 179 soldiers and civilian policemen for sexual abuse during peacekeeping missions.¹⁰⁰ As a reminder, the Moroccan unit under investigation in Côte d'Ivoire was eight hundred soldiers on its own.¹⁰¹ These statistics indicate that "peacekeepers are immune from prosecution for crimes they commit in the course of their peacekeeping functions."¹⁰² In Part III, this Article will explain the legal framework that perpetuates the default rule of impunity, noting ways in which peacekeepers may be held accountable, but explaining why the existing legal framework is inadequate to deter the pervasive problem of sexual abuse in peacekeeping missions.

III. IMMUNITY AND INJUSTICE FOR ALL: HOW UN LAWS PROTECT BLUE HELMET CRIMINALS

The principle of immunity originates from the famous adage, "The king can do no wrong."¹⁰³ This phrase meant that the king was free from legal action in his own courts, unless he specifically consented to suit.¹⁰⁴ In modern scholarship, many consider the doctrine an "anachronistic relic."¹⁰⁵ As governmental structures developed, however, the concept of jurisdictional immunity grew, extending from rulers to states, and eventually to international

⁹⁹ *Id.* at 6.

¹⁰⁰ Sweetser, *supra* note 57, at 1645.

¹⁰¹ See notes 81-82 and accompanying text.

¹⁰² Sweetser, *supra* note 57, at 1653.

¹⁰³ George W. Pugh, *Historical Approach to the Doctrine of Sovereign Immunity*, 13 LA. L. REV. 476, 476 (1953).

¹⁰⁴ *Id.* at 477; Erwin Chemerinsky, *Against Sovereign Immunity*, 53 STAN. L. REV. 1201, 1201 (2001).

¹⁰⁵ See Chemerinsky, *supra* note 104, at 1201-02; Vicki C. Jackson, *Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence*, 35 GEO. WASH. INT'L L. REV. 521, 522-23 (2003).

organizations.¹⁰⁶ The expanded form of sovereign immunity has been codified in various international treaties and is recognized as part of customary international law.¹⁰⁷ However, the United Nations Charter, the founding document of the United Nations, holds member states accountable for human rights abuses and other threats to international peace.¹⁰⁸ It imposes positive obligations on the state, thus promoting an understanding that the state and its rulers *can* do wrong. This is the very antithesis of immunity, and yet the United Nations has established a system of laws whereby the organization and its agents enjoy virtual, if not total, immunity for crimes committed abroad.¹⁰⁹ In this Part, Section A will analyze the immunity laws of the United Nations, and will explain the justifications for extending immunity principles to international organizations in the post-World War II era. Afterwards, Section B will expose the limitations of immunity and will illustrate how the United Nations has attempted to create measures of accountability for peacekeepers who commit sexual abuse crimes in the field.

A. The United Nations Can Do No Wrong: How Sovereign Immunity Expanded to International Organizations

i. The United Nations Charter, the Convention on the Privileges and Immunities of the United Nations, and SOFAs

The United Nations has two permanent sources of law and one case-specific negotiation tool to exercise its immunity privileges in peacekeeping operations. These are the United Nations

¹⁰⁶ Greta L. Rios & Edward P. Flaherty, *International Organization Reform or Impunity? Immunity is the Problem*, 16 ILSA J. INT'L & COMP. L. 433, 434-35 (2010).

¹⁰⁷ *Id.* at 435.

¹⁰⁸ *See generally* U.N. Charter art. 2.

¹⁰⁹ Frederick Rawski, *To Waive or Not to Waive: Immunity and Accountability in U.N. Peacekeeping Operations*, 18 CONN. J. INT'L L. 103, 103 (2002) (quoting *Westchester County v. Ranollo*, 67 N.Y.S. 2d 31, 34 (New Rochelle City Ct. 1946)); Sweetser, *supra* note 57, at 1652-53 (“The current structure of immunities within international law creates gaps in liability and fosters an environment in which peacekeepers can act with perceived impunity.”).

Charter, the Convention on the Privileges and Immunities of the United Nations, and Status of Forces Agreements (SOFAs), respectively. In Chapter XVI of the United Nations Charter, the organization included a powerful provision of immunity which would have significant legal implications decades later. Article 105 of the Charter states, “The Organization shall enjoy in the territory of each of its Member such privileges and immunities as are necessary for the fulfillment of its purposes.”¹¹⁰ In addition, “Representatives of the Members of the United Nations and officials of the Organization” enjoy the same privileges and immunities “as are necessary for the independent exercise of their functions in connection with the Organization.”¹¹¹

The principle of immunity was clearly important to member states because the General Assembly passed a separate Convention in 1946 dedicated exclusively to the issue. The Convention on the Privileges and Immunities of the United Nations states, “The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity.”¹¹² In later articles, representatives, officials, and experts are afforded virtually the same privileges and immunities as the United Nations.¹¹³

In addition to the statutory schemes discussed above, the United Nations will often negotiate a SOFA before commencing a peace operation to clarify the limitations on criminal and civil jurisdiction over peacekeeping forces.¹¹⁴ In 1989, the General Assembly requested the Secretary-General to prepare a “model status-of-forces agreement for peace-keeping operations,”

¹¹⁰ U.N. Charter art. 105, sec. 1.

¹¹¹ *Id.* art. 105, sec. 2.

¹¹² Convention on the Privileges and Immunities of the United Nations, art. II, sec. 2, Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 15.

¹¹³ *Id.* art. IV, sec. 11 (granting immunity to “representatives of members”); *id.* art. V, sec. 18 (granting immunity to “officials”), *id.* art. VI, sec. 22 (granting immunity to “experts on missions for the United Nations”).

¹¹⁴ Rios & Flaherty, *supra* note 106, at 440; *see* Draft Model Status-of-Forces Agreement between the United Nations and Host Countries, Report of the Secretary-General, U.N. GAOR, 45th Sess., at P26, U.N. Doc. A/45/594 (1990) [hereinafter Draft Model Status-of-Forces Agreement].

which the Secretary-General presented one year later.¹¹⁵ The Security Council referred to the Model SOFA specifically in Resolution 1528, the Resolution which created the UNOCI.¹¹⁶ At the very beginning of the document, Article II of the Model SOFA states that the Convention on the Privileges and Immunities applies to United Nations peacekeeping operations.¹¹⁷ Further, the document includes a provision on jurisdiction, which states, “All members of the United Nations peace-keeping operation including recruited personnel shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity.”¹¹⁸

If the host government believes that a foreign military member of the peacekeeping operation committed a criminal offense, he is instructed to inform the Special Representative or Commander, after which the accused will be subject “to the exclusive jurisdiction of their respective participating States.”¹¹⁹ This language grants absolute immunity to peacekeepers—at least within the United Nations system—for crimes committed abroad.¹²⁰

ii. Expanding the Rubber Band To its Edge: Extension of Immunity to the United Nations

All United Nations peacekeeping operations must abide by three conditions: consent of the parties to the peacekeepers’ presence, the use of force only for the purpose of self-defense, and “complete neutrality of the United Nations in the eyes of the warring parties.”¹²¹ It is the third principle, neutrality, which formed the foundation for extending immunity to the United

¹¹⁵ Draft Model Status-of-Forces Agreement, *supra* note 114, at P1.

¹¹⁶ S.C. Res. 1528, *supra* note 43, at ¶ 9 (“Requests the Secretary-General and the Government of National Reconciliation to conclude a status-of-force agreement within 30 days of adoption of this resolution, taking into consideration General Assembly resolution 58/82 on the scope of legal protection under the Convention on the safety of United Nations and associated personnel, and notes that, pending the conclusion of such an agreement, the model status-of-forces agreement dated 9 October 1990 (A/45/594) shall apply provisionally.”).

¹¹⁷ Draft Model Status-of-Forces Agreement, *supra* note 114, art. II.

¹¹⁸ *Id.* art. VI, sec. 46.

¹¹⁹ *Id.* art. VI, sec. 47(b).

¹²⁰ See Rawski, *supra* note 109, at 110.

¹²¹ See Ruth Wedgwood, *United Nations Peacekeeping Operations and the Use of Force*, 5 WASH. U. J.L. & POL’Y 69, 71 (2001); DPKO, *supra* note 28, at 31.

Nations and international organizations generally.¹²² In the post-World War II era, the United Nations and other similar international organization “giants” were nascent structures with no reputation and no credibility.¹²³ To ensure that the United Nations could perform the duties outlined in its Charter without succumbing to pressure or manipulation from its member states, the organization was granted protection from lawsuits.¹²⁴ This is the doctrine of functional necessity,¹²⁵ the very foundation of international relations. In theory, the United Nations and its agents may operate in a foreign country with complete neutrality, in accordance with its founding principles, because the threat of legal punishment has been removed.¹²⁶

As Greta Rios and Edward Flaherty explained, sovereign immunity principles for states and its actors eventually reformed to harmonize with changing foreign policy norms, but the absolute immunity theory granted to the United Nations remained unchanged. In the United States, for example, the International Organizations Immunities Act (IOIA), which became law the same year as the United Nations Charter, granted organizations “the same immunity from suit and every form of judicial process as is enjoyed by foreign governments,”¹²⁷ which at the time meant absolute immunity.¹²⁸ Over thirty years later in 1976, however, the United States Congress embraced a restrictive approach to immunity by passing the Foreign Sovereign

¹²² See Murray, *supra* note 37, at 480.

¹²³ Rios & Flaherty, *supra* note 106, at 436.

¹²⁴ *Id.*

¹²⁵ *Id.*; Murray, *supra* note 37, at 507 (“U.N. personnel are not absolutely immune from legal liability; rather their immunity is ‘in principle a functional immunity *ratione materiae*,’ meaning that ‘it seeks to protect interests of the UN rather than benefiting the agent personally.’” (quoting Chanaka Wickermasinghe & Guglielmo Verdirame, *Responsibility and Liability for Violations of Human Rights in the Course of UN Field Operations*, in *TORTURE AS TORT: COMPARATIVE PERSPECTIVES ON THE DEVELOPMENT OF TRANSNATIONAL HUMAN RIGHTS LITIGATION* 465, 488 & n.81 (Craig Scott ed., 2001))).

¹²⁶ Rawski, *supra* note 109, at 106 (noting that diplomats need a protected space of immunity “to fulfill their functions independently an free from interference by the government of the state in which they are posted”).

¹²⁷ International Organizations Immunities Act § 2(b), ch. 652, 59 Stat. 669 (1945).

¹²⁸ See Rios & Flaherty, *supra* note 106, at 438.

Immunities Act, which limited immunity of foreign states to acts *de jure imperii*.¹²⁹ The IOIA was never amended to reflect the same limitations.¹³⁰ As a result, United States law grants international organizations more extensive immunity than the immunity offered to sovereign states and foreign diplomats.¹³¹ This unfortunate discrepancy reflects outdated principles because the United Nations is no longer a fragile organization in need of protection. With 193 member states,¹³² a budget in the billions of dollars,¹³³ and an established reputation beyond compare, granting absolute immunity to the United Nations in order to protect organizational neutrality is like using a chainsaw to cut thread. At this point in history, the balance of power has reversed: civilians around the globe need protection against the United Nations, not the other way around.

Beyond the practical incongruities, a moral argument exists for eliminating absolute immunity for the United Nations and its peacekeeping agents. The purposes of United Nations outlined in the Charter include, “encouraging respect for human rights and for fundamental freedoms for all.”¹³⁴ Within the framework of international law, due process rights have been codified as basic human rights in the International Covenant on Civil and Political Rights (ICCPR)¹³⁵ and the Universal Declaration of Human Rights (UDHR).¹³⁶ Under a textual analysis,

¹²⁹ Foreign Sovereign Immunities Act, Pub. L. No. 94-538, 1976 U.S.C.C.A.N., 90 Stat. 2891. For information on efforts to amend the Foreign Sovereign Immunities Act, see generally Working Group of the American Bar Association, *Reforming the Sovereign Immunities Act*, 40 COLUM. J. TRANSNAT’L L. 489 (2002).

¹³⁰ See Rios & Flaherty, *supra* note 106, at 438.

¹³¹ See *id.*

¹³² *Frequently Asked Questions*, UNITED NATIONS OFFICE AT VIENNA (2015), <https://www.unvienna.org/unov/en/faq.html>.

¹³³ See United Nations, Department of Management, Regular Budget 2012-2013 (Feb. 2012), *available at* <http://www.un.org/en/hq/dm/pdfs/oppba/Regular%20Budget.pdf> (reporting a regular budget of 5,152 billion U.S. dollars approved for the 2012-2013 fiscal year).

¹³⁴ U.N. Charter art. 1, sec. 3; see also *id.* arts. 55-56.

¹³⁵ International Covenant on Civil and Political Rights art. II, sec. 3, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1996) (“Each States Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”).

¹³⁶ Universal Declaration of Human Rights art. 8, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”).

therefore, the United Nations has violated its own Charter by denying victims of sexual abuse the right to an effective remedy against United Nations peacekeepers.¹³⁷ This analysis, however, is based on the assumption that existing policies do not provide an effective remedy to victims. In Section B, this Article will demonstrate that this assumption is in fact true by showing how the existing framework failed to provide an effective remedy for Ivoirian victims.

B. Limitations to Immunity: Accountability Measures for United Nations Peacekeepers

As mentioned in Section A, the United Nations Charter grants privileges and immunities to the United Nations and its agents, but limits immunity as is necessary to perform their purposes and functions, respectively. The Convention on the Privileges and Immunities codifies a similar limitation for immunity granted to representatives, officials, and experts:

Privileges and immunities are accorded ... not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its [representative, official, or expert] in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.¹³⁸

This Section explores ways in which the United Nations has attempted to hold its agents accountable for sexual abuse abroad by using the limiting language of the Charter and the Convention.

Before exploring the positive use of functional immunity to promote accountability, an unfortunate caveat must be mentioned. The Charter and the Convention seem to indicate that the United Nations itself, as well as its representatives and officials, do not have unconditional immunity: The organization and its actors enjoy immunity only insofar as it is required to fulfill

¹³⁷ See Rios & Flaherty, *supra* note 106, at 443-45.

¹³⁸ Convention on the Privileges and Immunities of the United Nations, *supra* note 112, at sec. 14; *see also id.* at secs 20, 23.

their purposes or functions.¹³⁹ In reality, this limitation is interpreted broadly, granting United Nations agents immunity from prosecutions for almost all actions committed in the course of their peacekeeping functions.¹⁴⁰ The International Court of Justice (ICJ) and the United Nations itself adopt a generous approach to diplomatic immunity laws.¹⁴¹ In a 1989 advisory opinion, for example, the ICJ unanimously held that Article 105 of the Charter protected all “tasks entrusted to the person’ regardless of whether they occurred on an official mission.”¹⁴² Blue helmet immunity may be limited, but it is not much of a limitation.

Although immunity principles for peacekeepers are generous, the United Nations and its executive agents attempted to create stronger mechanisms of accountability as early as 1999, after reports of abuse in various peacekeeping missions began to surface in the media.¹⁴³ The United Nations responded to public outrage with guidelines and bulletins to clarify the application of human rights principles and international humanitarian law (IHL) to peacekeeping forces. Included in this library is the Bulletin on the Observance by United Nations Forces of International Humanitarian Law.¹⁴⁴ Signed in August 1999, Secretary-General Kofi Annan declared that “[t]he fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement.”¹⁴⁵ Technically, this declaration severely limits the application of IHL principles to peacekeeping forces because the combat role of the blue helmets is just one of many

¹³⁹ See *supra* note 138 and accompanying text.

¹⁴⁰ Sweetser, *supra* note 57, at 1652-53.

¹⁴¹ Rawski, *supra* note 109, at 112.

¹⁴² *Id.* (quoting Advisory Opinion on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Dec. 15, 1989), available at <http://www.icj-cij.org/docket/files/81/6813.pdf> (last visited Apr. 18, 2015)).

¹⁴³ For examples of atrocities, see Glick, *supra* note 15, at 53 & n.1.

¹⁴⁴ Bulletin: The Secretary-General, Observance by United Nations Forces of International Humanitarian Law, U.N. Doc. ST/SGB/1999/13 (Aug. 6, 1999) [hereinafter 1999 Bulletin].

¹⁴⁵ *Id.* at sec. 1.

responsibilities that may be included in a mandate.¹⁴⁶ Avoiding the text, some interpret the Bulletin’s statement as applying to all peacekeeping activity;¹⁴⁷ this is because Section 3—which does not refer to duties during active combat exclusively—commits to ensuring “that the [peacekeeping] force shall conduct its operations with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel.”¹⁴⁸ Because this debate does not have a definitive answer, the Bulletin’s application to sexual abuse cases in Côte d’Ivoire may depend on whether the peacekeeping forces were assuming a combatant role at the time of the alleged conduct.

Without addressing this question directly, peacekeeping forces clearly violated IHL principles in Côte d’Ivoire, regardless of whether the United Nations chooses to acknowledge that the laws of war applied to their agents. Common Article 3 of the Geneva Convention states, “Persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely.”¹⁴⁹ Under Section 7 of the 1999 Bulletin, Secretary-General Annan directly reaffirms the peacekeeping forces’ duty to treat civilians “humanely.”¹⁵⁰ This concept is further developed to include special protections for women “against rape, enforced prostitution or any other form of indecent assault,” as well as special protections for children.¹⁵¹ In addition to the 1999 Bulletin, the Secretary-General issued another Bulletin in 2003 in which sex crimes against

¹⁴⁶ Saura, *supra* note 39, at 481-82; *see also supra* notes 38-41 and accompanying text.

¹⁴⁷ *See* Daphna Shagra, *UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage*, 94 AM. J. INT’L L. 406, 406 (2000) (interpreting the 1999 Bulletin as applying to all peacekeeping activities).

¹⁴⁸ 1999 Bulletin, *supra* note 144, at sec. 3.

¹⁴⁹ *See* Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, art. 3, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

¹⁵⁰ 1999 Bulletin, *supra* note 144, at sec. 7(1).

¹⁵¹ *Id.* at sec. 7(3) (prohibiting attacks against women); *id.* at sec. 7(4) (“Children shall be the object of special respect and shall be respected against any form of indecent assault.”).

civilian women by peacekeeping forces were unequivocally prohibited.¹⁵² It states, “United Nations forces conducting operations under United Nations command and control are prohibited from committing acts of sexual exploitation and sexual abuse, and have a particular duty of care towards women and children.”¹⁵³ Given the widespread sexual abuse of female children in Côte d’Ivoire,¹⁵⁴ the peacekeeping forces clearly violated IHL principles outlined in the Geneva Conventions, as well as standards of conduct outlined in the 1999 and 2003 Bulletins.

Elizabeth’s story, for example, was a case in which Pakistani peacekeepers treated a civilian child inhumanely through rape and indecent assault.¹⁵⁵ She was clearly sexually abused, as evidenced by her emotional and physical injuries from the gang rape, and the peacekeepers clearly had a “particular duty of care” when interacting with this thirteen-year-old girl.¹⁵⁶

According to the Secretary-General, the punishment should be prosecution in the peacekeepers’ national courts, which in this case would be Pakistan.¹⁵⁷ Unfortunately, Elizabeth’s abusers, along with hundreds of other peacekeepers, will not be held accountable for their unequivocal violations of IHL. As one aid worker in Côte d’Ivoire noted, “Many UN agencies ... working here feel they cannot be touched by anyone.”¹⁵⁸ This is because the existing legal framework, albeit stronger, places the burden on troop-contributing countries to discipline its soldiers.¹⁵⁹

However, state courts tend to overlook this criminal conduct and the United Nations avoids chastising or pressuring the member states to prosecute because it depends on voluntary

¹⁵² Bulletin: The Secretary-General, Special Measures for Protection from Sexual Exploitation and Sexual Abuse, U.N. Doc. ST/SGB/2003/13 (Oct. 9, 2003) [hereinafter 2003 Bulletin].

¹⁵³ *Id.* at sec. 2(2).

¹⁵⁴ *See supra* Part II.B.

¹⁵⁵ BBC NEWS, *supra* note 5.

¹⁵⁶ *Id.*

¹⁵⁷ 1999 Bulletin, *supra* note 144, at sec. 4 (“In case of violations of international humanitarian law, members of the military personnel of a United Nations force are subject to prosecution in their national courts.”); 2003 Bulletin, *supra* note 152, at sec. 5 (“If, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution.”).

¹⁵⁸ CSÁKY, *supra* note 78, at 16.

¹⁵⁹ Michael Fleshman, *Tough UN Line on Peacekeeper Abuses*, 19 AFRICA RENEWAL 16, 17 (2005).

donations to staff peacekeeping missions.¹⁶⁰ In some cases, the United Nations has assumed the role of an enabler, handing out condoms to the troops while they were being briefed on their mission assignments.¹⁶¹ To make matters worse, United Nations staff have no internal incentives for reporting crime or corruption within the organization; on the contrary, staff who reported wrongdoings in the past have been subjected to harassment and intimidation because the United Nations currently does not have any system of whistleblower protections.¹⁶² Despite extensive reform efforts, the system continues to discourage accountability among blue helmet criminals.

As an additional obstacle, in cases where the state courts choose to place their nationals on trial, prosecution is rare and often uneven. In the Congo, for example, a French peacekeeper accused of sexual abuse was tried and convicted immediately after returning to France, whereas two South African peacekeepers accused of the same crime were held without trial.¹⁶³ Because some peacekeepers know that sentences for sexual abuse in their home country are negligible or that their home country does not have a propensity for prosecuting peacekeepers who commit abuses abroad, the deterrent effect of law enforcement dissipates and the abuses continue.¹⁶⁴ Accepting that the current system grants near-absolute immunity to United Nations peacekeeping forces for sex crimes committed in the field, despite rules permitting prosecution in troop-contributing states, Part IV will propose preventive and administrative solutions to diminish instances of sexual abuse in future peacekeeping missions.

¹⁶⁰ See Harrington, *supra* note 12, at 139.

¹⁶¹ Tobias Kuhlmann, *Educating Peacekeepers about AIDS*, 41 U.N. CHRONICLE 55, (2004); see Colum Lynch, *U.N. to Issue Condoms to Africa Peacekeepers*, WASH. POST, Mar. 18, 2000, at A01; U.S. General Accounting Office, *U.N. Peacekeeping: United Nations Faces Challenges in Responding to the Impact of HIV/AIDS on Peacekeeping Operations 14* (2001) (“DPKO provides contingents with five condoms per troop per week. DPKO procures condoms for peacekeepers primarily from the U.N. Population Fund, delivers them to the commanders of each contingent, and makes them available in bathrooms, nightclubs, and other venues frequented by peacekeepers.”).

¹⁶² See Cara Anna, *Whistleblowers: Little UN Protection for Exposing Wrongdoing*, ABC NEWS (Apr. 9, 2015, 7:09 PM), <http://abcnews.go.com/US/wireStory/whistleblowers-protection-exposing-wrongdoing-30210170> (providing examples of whistleblowers who were mistreated by the United Nations after reporting wrongdoings).

¹⁶³ See Harrington, *supra* note 12, at 139.

¹⁶⁴ *Id.* at 140; Ndulo, *supra* note 20, at 144 (“[P]eacekeepers commit these violations because they believe they can get away with it.”).

IV. SOLUTIONS FOR COMBATTING SEXUAL ABUSE IN FUTURE PEACEKEEPING MISSIONS

In an ideal world, all member states would have strong criminal justice systems that would hold peacekeepers accountable for their crimes. As the next-best alternative, in a pseudo-ideal world, the United Nations would pressure its member states to prosecute peacekeepers who commit crimes to the full extent of the law, both through public shaming tactics and punitive measures. Although some scholars support the latter approach,¹⁶⁵ the United Nations does not operate in an ideal, or even a pseudo-ideal, world. Member states will handle their soldiers as they see fit, and the United Nations will not pressure these nations to prosecute because it depends on the voluntary donations of member states to staff the sixteen current—and undoubtedly countless future—peacekeeping missions. Considering these realistic limitations, this Part offers two practical solutions to improve the current system of injustice: (1) create more rigorous peacekeeper troop vetting and training procedures; and (2) hire a permanent, independent staff of trained personnel to monitor each mission.

A. A Preventive Measure: Know Your Troops and Train Your Troops

In a statement to the United Nations, the International Committee of the Red Cross (ICRC) noted that because of the expanding mandates on peacekeeping missions, United Nations personnel must be “fully aware of and adhere scrupulously to the rules and standards applicable to these situations, in particular human rights law.”¹⁶⁶ Reading between the lines, the ICRC was criticizing the lack of training among United Nations peacekeeping forces. The United Nations does not have a standing army; instead, it relies on the voluntary contributions of member

¹⁶⁵ See, e.g., Harrington, *supra* note 12, at 147-48 (suggesting that the United Nations “put pressure on these countries to vigorously prosecute the abusive peacekeepers”).

¹⁶⁶ ICRC, Peacekeeping Operations: ICRC Statement to the United Nations (Nov. 6, 2014), *available at* <https://www.icrc.org/en/document/peacekeeping-operations-icrc-statement-united-nations-2014>.

states.¹⁶⁷ As of February 2015, the member states with the largest donations of peacekeeping troops included Bangladesh with 7998 troops, India with 7074 troops, Pakistan with 7925 troops, and Ethiopia with 7714 troops.¹⁶⁸ It should not matter where the troops come from, so long as they are vetted and trained, but the United Nations has failed to do either properly.¹⁶⁹

For most of its history, the United Nations had no formal guidelines or policies for the vetting of peacekeeping personnel.¹⁷⁰ This changed in December 2012 when Secretary-General Ban Ki-Moon endorsed the Policy on Human Rights Screening of U.N. Personnel.¹⁷¹ The Policy outlines a three-pronged approach for human rights screening of all peacekeeping staff, among other actors: (1) troop-contributing states must certify that the personnel have not committed human rights violations, (2) individuals seeking to serve must submit self-attestations, and (3) the United Nations Secretariat will establish an information exchange mechanism to record prior human rights conduct of candidates.¹⁷² Two years after launching the program, however, the Open Society Institute reported failures in human rights vetting for peacekeeping soldiers in Bangladesh, India, Nepal, and Nigeria under the Policy;¹⁷³ consequently, two of the largest member state donors deployed individuals who may have committed serious human rights violations.

¹⁶⁷ *Military*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/issues/military.shtml> (last visited Mar. 11, 2015); Katherine T. Ward, *From Keeping the Peace to Making It: The Changing Role of UN Security Forces*, 88 AM. SOC'Y INT'L L. PROC. 328, 343-44 (1994).

¹⁶⁸ United Nations, Contributors to United Nations Peacekeeping Operations (Feb. 28, 2015), *available at* http://www.un.org/en/peacekeeping/contributors/2015/feb15_1.pdf.

¹⁶⁹ See Harrington, *supra* note 12, at 150.

¹⁷⁰ See *id.*; Ward, *supra* note 167, at 344.

¹⁷¹ G.A., Report of the Secretary-General on the Work of the Organization, supp. no. 1, at 13-14, 68th sess., U.N. Doc. A/68/1 (2013).

¹⁷² UNITED NATIONS, UNITED NATIONS FORCE HEADQUARTERS HANDBOOK 38 (2014), *available at* <http://www.ccopab.eb.mil.br/biblioteca/documentos/FHQ%20Manual.pdf> [hereinafter UNITED NATIONS FORCES HANDBOOK].

¹⁷³ *Transcript: Vetting of UN Peacekeepers: Reportage from the Ground*, OPEN SOCIETY FOUNDATIONS, http://www.opensocietyfoundations.org/sites/default/files/vetting-un-peacekeepers-reportage-ground-20140708_0.pdf (last visited Mar. 28, 2015); *Is the UN Peacekeeper Selection Process Flawed?*, IRIN, <http://www.irinnews.org/printreport.aspx?reportid=100415> (last visited Mar. 28, 2015).

The current vetting procedure will likely continue to fail because, once again, the United Nations is delegating its responsibilities to actors who are less qualified and less equipped to handle these enormous tasks. Just as the United Nations delegated the responsibility for prosecutions to the member states,¹⁷⁴ the 2012 Policy relies on the state and the individual to perform the vetting procedures.¹⁷⁵ Assuming its operations function in an ideal world, the United Nations is trusting the very actors it should *not* trust. This point is embarrassingly obvious because all member states and troops receive financial compensation for peacekeeper service: as of July 2014, states receive 1,332 U.S. dollars per person deployed per month and individual troops receive a regular salary from their government.¹⁷⁶ Within the current framework, the system financially incentivizes member states and individuals to lie.

The first policy recommendation, therefore, is for the United Nations to assume full responsibility for the vetting of all peacekeeping troops. The DPKO should create a separate department that screens all individual candidates for human rights abuses and general criminal conduct. Under this system, a neutral investigator will bear the responsibility of clearing individuals for service with the United Nations, thus creating a standardized, independent system of review. Although this program will require a significant amount of resources and staff, it is worth the cost. Constant allegations of peacekeeper misconduct are severely damaging the reputation of the United Nations.¹⁷⁷ If the organization decides to continue its operations without assuming responsibility for staff vetting, post-conflict states may eventually decline to invite peacekeeping missions into their territory. Moreover, the United Nations will continue to bear

¹⁷⁴ See *supra* notes 157-59 and accompanying text.

¹⁷⁵ See UNITED NATIONS FORCES HANDBOOK, *supra* note 172, at 38.

¹⁷⁶ *Is the UN Peacekeeper Selection Process Flawed?*, *supra* note 173; *Financing Peacekeeping*, *supra* note 26.

¹⁷⁷ See, e.g., FERSTMAN, *supra* note 56; Elizabeth F. Defeis, *U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity*, 7 WASH. U. GLOBAL STUD. L. REV. 185, 214 (2008) (“Allegations of sexual abuse have already tarnished both the reputation of the United Nations and the fine and difficult work of the U.N. peacekeepers.”).

moral responsibility for thousands of sexual abuse crimes until eventually its reputation will be damaged beyond repair.

In addition to vetting procedure reform, the United Nations is also in desperate need of standardize training programs for all United Nations peacekeeping personnel. In 2010, an internal audit report noted that the Office of Military Affairs had “no methodology or standards for the evaluation of the performance of military contingent units in peacekeeping missions.”¹⁷⁸ Performance reviews did not exist because comprehensive training programs did not exist. Recognizing this gap, the DPKO completed a Strategic Peacekeeping Training Needs Assessment in 2008, identifying three phases of training: (1) Pre-Deployment Training, (2) Induction Training, and (3) Ongoing Training.¹⁷⁹ Once again, however, the United Nations shifted the burden on member states to deliver training materials to peacekeeping personnel during the pre-deployment training phase, arguably the most important of the three phases.¹⁸⁰ Some peacekeeper training courses are available online for a fee at the Peace Operations Training Institute,¹⁸¹ but there is still no comprehensive, uniform system of training for all peacekeeping staff.

As a second recommendation, therefore, this Article proposes the creation of a mandatory, standardized training program for all individuals planning to participate in a peacekeeping mission. To combat instances of sexual abuse, a section of this program should focus on treatment of civilians and United Nations codes of conduct. Miscellaneous materials explaining

¹⁷⁸ U.N. Office of Internal Oversight Services, *Audit Report: Office of Military Affairs*, Assignment No. AP 2009/600/02 (May 28, 2010); ALBERTO CUTILLO, INTERNATIONAL PEACE INSTITUTE, *PROVIDING THE BEST: ENHANCING TRAINING FOR UNITED NATIONS PEACEKEEPERS 1* (2013).

¹⁷⁹ *About Peacekeeping Training*, PEACEKEEPING RESOURCE HUB (2007), http://www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/PeacekeepingTraining.aspx?page=about&menukey=_12_1.

¹⁸⁰ *Id.*

¹⁸¹ *Peacekeeper Training Courses*, PEACE OPERATIONS TRAINING INSTITUTE, <http://www.peaceopstraining.org/courses> (last visited Mar. 11, 2015).

the responsibilities and duties of peacekeeping forces already exist, including the DPKO Infantry Battalion Manual, which includes a chapter on the protection of civilians.¹⁸² This Article simply proposes that the United Nations combine its guidelines and recommendations into one comprehensive curriculum for all future staff. Assuming the program will succeed, formal training would hopefully create the expectation of accountability, and would thus deter future staff from abusing their authority in the field.

Former United Nations Secretary-General Dag Hammarskjöld once stated that “peacekeeping is not a job for soldiers but only soldiers can do it.”¹⁸³ Before the United Nations deploys the soldiers into warzones, however, all soldiers must be vetted and must receive proper training on expected codes of conduct. This is not a farfetched request. In a 2000 report on United Nations peacekeeping operations, known as the Brahimi Report, a panel stressed “the importance of training military, police and other civilian personnel on human rights issues and on the relevant provisions of international humanitarian law.”¹⁸⁴ This recommendation was announced fifteen years ago, and yet the United Nations still does not have an organized vetting and training strategy for peacekeeping troops. Recognizing that peacekeeper misconduct will continue to flourish within the current system, it is time for the United Nations to follow its own recommendations.

B. An Administrative Measure: Big Brother is Watching

The story of Elizabeth mentioned above noted that the young girl did not report her rape to the proper authorities, or even to her parents, because she feared her parent’s reaction.¹⁸⁵ In Côte d’Ivoire and other countries in Africa and Asia, stigmatization is common for victims of

¹⁸² U.N. DEP’T OF PEACEKEEPING OPERATIONS, DEPARTMENT OF FIELD SUPPORT, UNITED NATIONS INFANTRY BATTALION MANUAL (2012), available at <http://www.un.org/en/peacekeeping/documents/UNIBAM.Vol.I.pdf>.

¹⁸³ CUTILLO, *supra* note 178, at 2.

¹⁸⁴ G.A., Report of the Panel on United Nations Peace Operations, 55th Session, U.N. Doc. A/55/305 (2000).

¹⁸⁵ BBC NEWS, *supra* note 5.

sexual abuse.¹⁸⁶ This cultural phenomenon creates yet another hurdle to accountability: Before a criminal can be prosecuted, the victim must report the crime. In its investigation, Save the Children noted that the United Nations and other international organizations were not adequately encouraging victims to report crimes of sexual abuse.¹⁸⁷ As this Article mentioned, however, the United Nations adopted numerous policies in Côte d’Ivoire and elsewhere aimed at encouraging victims to come forward, including public awareness campaigns,¹⁸⁸ hotlines,¹⁸⁹ and investigations.¹⁹⁰ None of these methods have been successful in effectively addressing the problem of peacekeeper sexual abuse.

As a solution, Alexandra Harrington proposed an alternative strategy whereby the permanent members of the Security Council would send envoys from their own military to oversee the conduct of peacekeepers.¹⁹¹ This administrative solution, albeit innovative, still does not solve the core problem with existing United Nations programs. The reason none of the above methods worked, and why programs like it will not work, is because the United Nations is asking victims to report the crimes to the very organization responsible for committing them. Although the United Nations has established disciplinary components for peacekeeping missions,¹⁹² an additional, independent watchdog organization must be created to supervise peacekeeping forces and to document reported abuses.

As a point of clarification, this Article is not suggesting that all United Nations oversight efforts should be abandoned in favor of this new watchdog policy. The independent watchdog

¹⁸⁶ See, e.g., CSÁKY, *supra* note 78, at 13 (quoting a young girl in Côte d’Ivoire who noted, “Your name will be ruined”).

¹⁸⁷ *Id.* at 20.

¹⁸⁸ Secretary-General, Eighteenth Progress Report on the United Nations Operation in Côte d’Ivoire, at 13, U.N. Doc. S/2008/645 (Oct. 13, 2008).

¹⁸⁹ Secretary-General, Tenth Progress Report on the United Nations Operation in Côte d’Ivoire, at 14, U.N. Doc. S/2006/821 (Oct. 17, 2006).

¹⁹⁰ *About Us*, OFFICE OF INTERNAL OVERSIGHT SERVICES (2010), http://www.un.org/Depts/oios/pages/about_us.html.

¹⁹¹ Harrington, *supra* note 12, at 147.

¹⁹² See, e.g., *id.*; CSÁKY, *supra* note 78, at 20.

proposal and United Nations internal oversight mechanisms should work together to combat sexual abuse in future peacekeeping missions. Common sense dictates, however, that an organization other than the United Nations must be available to provide supervision and to receive reports from alleged victims.

Staff from the International Committee of the Red Cross (ICRC) would be a sensible international partner for this reform, particularly because they already have a program for victims of sexual violence during war.¹⁹³ In addition, their staff is stationed in all regions of the world, resulting in significant overlap with United Nations peacekeeping locations.¹⁹⁴ Furthermore, the ICRC, in association with Save the Children, Oxfam, and other agencies, has a peer review process in which the organizations review each other's performance to detect potential staff abuses.¹⁹⁵ The ICRC is equipped to "police the police" because they have internal policing measures which would hopefully end the perpetual cycle of abuse. Of course, this model depends on ICRC interest and cooperation, which remains an unknown variable. Based on policy statements and efforts to "integrate" its work with United Nations peacekeeping work in the past,¹⁹⁶ however, the ICRC will likely approach the proposal with enthusiasm.

CONCLUSION

Elizabeth and thousands of other victims of peace will not receive justice for the atrocities they suffered. The blue helmets responsible for her rape, and many like them, will continue to sexually abuse vulnerable women during peacekeeping missions, all while wearing

¹⁹³ *Addressing Sexual Violence*, ICRC, <https://www.icrc.org/en/what-we-do/sexual-violence> (last visited Mar. 11, 2015).

¹⁹⁴ *Where We Work*, ICRC, <https://www.icrc.org/en/where-we-work> (last visited Mar. 11, 2015).

¹⁹⁵ For an evaluation of the program, see SCHR PEER REVIEW ON ACCOUNTABILITY TO DISASTER-AFFECTED POPULATIONS: AN OVERVIEW OF LESSONS LEARNED (2010), *available at* <http://schr.info/assets/uploads/docs/100212-SCHR-Peer-Review-lessons-paper-January-2010.pdf>.

¹⁹⁶ *See, e.g.*, ICRC, *supra* note 166.

the United Nations emblem on their hats and their sleeves. Under the United Nations Charter, the Convention on the Privileges and Immunities of the United Nations, and various SOFAs, the United Nations and most peacekeepers have a shield protecting them against prosecution in the host state, leading to a default system of impunity for crimes committed in the field. Assuming the system will not change, the United Nations can pursue preventive solutions—including the adoption of vetting and training procedural reform and the creation of an independent watchdog organization—in order to combat instances of sexual abuse in the future.

When the United Nations invades the sovereignty of a nation for the purpose of restoring peace, it has a responsibility to the host state and its citizens to respect basic criminal laws and universal principles of international humanitarian law. Over the past few decades, however, its agents have failed to abide by any system of law, or even any standard of moral decency. Aware of the prevalence of sexual abuse in peacekeeping missions today, the United Nations—regardless of whether it chooses to acknowledge it—assumes partial responsibility for the rape of Elizabeth and thousands of other civilians around the world. For the sake of vulnerable populations in future peacekeeping missions, the United Nations must take action to prevent its personnel from committing sexual abuse crimes in the future.