PERVERTING PEACEKEEPING:

THE ORGANISATIONAL ACCOUNTABILITY OF THE UNITED NATIONS FOR SEXUAL EXPLOITATION AND ABUSE ON PEACEKEEPING OPERATIONS

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DECLARATION OF AUTHORSHIP

I hereby certify that this thesis contains no material which has been accepted for the award of any other degree in any university or other institution. I certify that to the best of my knowledge this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

Athena Mai-Tram Nguyen
19 August 2014

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ABSTRACT

Allegations of sexual exploitation and abuse (SEA) have plagued peacekeeping operations for over a decade. Despite the United Nations (UN) extensive efforts to address the problem, acts of SEA continue to occur and cause great harm to victims and survivors, to the success of the peacekeeping operation, and to the reputation and credibility of the UN.

Whilst the responsibility of the alleged perpetrator and of the State from which the perpetrator came have been considered in the literature, an area that has received less attention is the legal responsibility of the UN. In this thesis, this area of responsibility will be examined. The question will be asked: how can the organisational accountability of the UN be established for acts of SEA committed on its peacekeeping operations? To answer this question, this thesis will consider: first, whether acts of SEA are prohibited under international law and, therefore, whether these acts are a violation of international law; second, whether international organisations, such as the UN, have any obligations under international law; and, if so, if and how the UN may be held accountable for failing to uphold its obligations.

In this thesis, it will be argued that the best international legal framework for the prohibition of acts of SEA is international human rights law. However, an analysis of the current legal system will demonstrate that it is difficult to hold the UN to account due to limitations in the personal and subject-matter jurisdiction of international, regional, and domestic judicial bodies.

The unique contribution of this thesis will be to offer an alternative solution to establishing the organisational accountability of the UN. It will be proposed that the UN treaty bodies

should be empowered with the competency to consider communications from individuals alleging a violation of their human rights through acts of SEA by UN personnel. The arguments presented in this thesis will outline: why the communications procedures of the UN treaty bodies are an effective process through which to resolve allegations of SEA; the legal and procedural changes that are needed to establish this process; the benefits for individual survivors, the UN, and the international community; and why this proposal is an effective, pragmatic, and economical solution to the problem of ensuring the organisational accountability of the UN for acts of SEA committed on its peacekeeping operations.

ABBREVIATIONS

AfCHPR	African Court on Human and Peoples' Rights
ARIO	*Articles on the Responsibilities of International Organizations*
ARS	*Articles on the Responsibility of States for Internationally Wrongful Acts*
BINUB	United Nations Integrated Office in Burundi
CAT	*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
CATHB	*Convention on Action against Trafficking in Human Beings*
CEDAW	*Convention on the Elimination of All Forms of Discrimination against Women*
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	*Convention on the Rights of the Child*
CRPD	*Convention on the Rights of Persons with Disabilities*
CTOC	*Convention Against Transnational Crime*
DEVAW	*Declaration on the Elimination of Violence Against Women*
DPKO	United Nations Department of Peacekeeping Operations
ECHR	*European Convention on Human Rights*
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ESA	European Space Agency
GLE	Group of Legal Experts
IACHPR	Inter-American Court of Human Rights
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICC EoC	International Criminal Court Elements of Crimes
ICCPR	*International Covenant on Civil and Political Rights*

ICESCR	*International Covenant on Economic, Cultural and Social Rights*
ICJ	International Court of Justice
ICL	International criminal law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International humanitarian law
ILC	International Law Commission
ILO	International Labour Organization
ILO Convention	International Labour Organization *C182 Worst Forms of Child Labour Convention*
IOM	International Organization of Migration
IPTF	International Police Task Force
KFOR	Kosovo Force
MINURCAT	United Nations Mission in the Central African Republic and Chad
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUC	United Nations Mission in the Democratic Republic of Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OAS	Organization of American States
OCHA	Office of the Coordination of Humanitarian Affairs

OIOS	Office of Internal Oversight Services
OP CRC	*Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*
OSCE	Organization for Security and Cooperation in Europe
SEA	Sexual exploitation and abuse
SOFAs	Status-of-Forces Agreements
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMID	African Union-United Nations Hybrid Operation in Darfur
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFIL	United Nations Interim Force in Lebanon
UNISFA	United Nations Interim Security Force for Abyei
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in the Sudan
UNMISS	United Nations Mission in the Republic of South Sudan
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOCI	United Nations Operation in Côte d'Ivoire
UNODC	United Nations Office on Drugs and Crime

UN Protocol	*United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSC	United Nations Security Council
VAW	Violence against women
WFP	World Food Programme

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CHAPTER 1

Introduction

Throughout history, rape and prostitution have been one of the 'dirty secrets' of warfare.[1] Rape has long been used as a 'weapon of war' to humiliate and demoralise the enemy and to tear apart the social and familial bonds of their community. Rape has also been seen as a part of the 'spoils' of war, as a reward for the victors, and as a display and release of the aggressive masculinity of the conquering soldiers. In a similar vein, militarised prostitution[2] has often been described as a form of 'rest and relaxation' for soldiers and as a 'reward [for] soldiers away from the battlefield by giving them sexual access to and use of others' women.'[3] This has included not only the prostitution of local women but also the transportation of other women to where soldiers have been stationed.[4]

Although rape and militarised prostitution have historically been seen as inevitable consequences of war or as individual acts not amounting to 'real' war crimes, the courageous activism of many survivors and human rights activists has forced the international community to recognise that sexual violence during armed conflict is a human rights violation.[5] Acts of rape and enforced prostitution are now considered amongst the 'most serious crimes of international concern' and as crimes against humanity and war

[1] Anne Llewellyn Barstow, *War's Dirty Secret: Rape, Prostitution, and Other Crimes Against Women* (Pilgrim Press, 2000).
[2] Militarised prostitution has been defined as 'prostitution catering to, and sometimes organized by, the military.' See Katherine HS Moon, *Military Prostitution and the U.S. Military in Asia* (11 February 2009) Japan News <http://ikjeld.com/en/news/81>. Last Accessed: 12 August 2014.
[3] Kathryn Farr, *Sex Trafficking: The Global Market in Women and Children* (Worth Publishers, 2005) 166.
[4] Kwan Choi, 'Human Trafficking for Sexual Exploitation in the UK: Case Study of Eastern Europe and the Baltic States' Women' (2010) 13(1) *International Area Review* 105, 114.
[5] See, eg, Kerry F Crawford, 'From Spoils to Weapons: Framing Sexual Violence as a Weapon of War at the United Nations Security Council' (Speech delivered at the American Political Science Association 2013 Annual Meeting, Chicago, 29 August – 1 September 2013) <http://ssrn.com/abstract=2301879>. Last Accessed: 12 August 2014.; Inger Skjelsbæk, *The Elephant in the Room: An Overview of how Sexual Violence Came to be Seen as a Weapon of War* (International Peace Research Institute, 2010).

crimes.[6] Regardless of these developments, however, both rape in war and militarised prostitution continue to occur on a significant scale.[7]

Whilst the sexual violence committed by 'enemy' soldiers may be met with a sense of sad resignation, the same behaviour was not expected of our peacekeepers. The arrival of the 'blue helmets' and the flag of the United Nations (UN) signalled to the world the arrival of soldiers who were committed to international peace and security and who would respect and protect universal human rights. Therefore, when allegations of sexual exploitation and abuse (SEA) by UN peacekeepers began to emerge, the international community reacted with horror and disbelief. Unfortunately, these allegations were not a once-off occurrence. For more than a decade, the UN has faced major sex scandals in West Africa,[8] Bosnia and Herzegovina,[9] and the Democratic Republic of the Congo,[10] to name a few. In fact, in 2012, the UN received allegations of SEA from 10 different missions, including the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), United Nations Mission in South Sudan (UNMISS), United Nations Mission in Liberia (UNMIL), United Nations Stabilization Mission in Haiti (MINUSTAH), and United Nations

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[6] *Rome Statute of the International Criminal Court*, open for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) arts 1, 7 and 8.

[7] See, eg, *In DR Congo, M23 Rebels Kill, Rape Civilians* (22 July 2013) Human Rights Watch <http://www.hrw.org/news/2013/07/22/dr-congo-m23-rebels-kill-rape-civilians-0>. Last Accessed: 12 August 2014; Donatilla Mukamana and Anthony Collins, 'Rape Survivors of the Rwandan Genocide' (2006) 17 *International Journal of Critical Psychology* 140; Human Rights Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (Human Rights Watch, 1996); Patrick Davies, *Like Landmines and Cluster Bombs, Rape Is a Weapon of War and Must Be Outlawed* (24 September 2013) Huffington Post <http://www.huffingtonpost.com/patrick-davies/like-landmines-and-cluste_b_3976575.html>. Last Accessed: 12 August 2014.

[8] Muna Ndulo, 'The United Nations Responses To The Sexual Abuse And Exploitation Of Women And Girls By Peacekeepers During Peacekeeping Missions' (2008) 27(1) *Berkley Journal of International Law* 126, 140.

[9] Amnesty International, *So Does that Mean I Have Rights? Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo* (Amnesty International, 2004) 1.

[10] *Investigation by the Office of Internal Oversight Services into Allegations of Sexual Exploitation and Abuse in the United Nations Organization Mission in the Democratic Republic of the Congo*, UN Doc A/59/661 (5 January 2005) ('*Investigation into Congo*').

Operation in Côte d'Ivoire (UNOCI).[11] These allegations have involved a wide range of UN personnel, including UN military troops, UN civilian police, UN staff, and UN volunteers,[12] and have been made against UN personnel across different levels of seniority, from low level camp guards to a Commander of the UN Police Force.[13] Whilst most of these allegations have occurred within the context of peacekeeping operations, acts of SEA have also been reported across other UN operations. For example, in 2012, allegations were received against 45 UN entities, including departments and offices of the Secretariat and different UN agencies, funds, and programmes, such as the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), and the UN World Food Programme (WFP).[14] The types of allegations reported have included: rape; sex with minors; sexual assault; trafficking in persons for sexual exploitation; the exchange of money, employment, goods and services for sex; solicitation of prostitutes; and other forms of SEA.[15] Understandably, these allegations have been met with outrage and disgust by international civil society. Gita Sahgal, the former head of Amnesty International's Gender Unit, has summed up the problem by stating that: '[t]he issue with the UN is that peacekeeping operations unfortunately seem to be doing the same thing that other militaries do. Even the guardians have to be guarded.'[16]

The aim of this thesis is to analyse and address the problem of SEA on UN peacekeeping operations. Much has already been written on this subject and the existing literature has

[11] *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 67th sess, Agenda Item 135, UN Doc A/67/766 (28 February 2013) 4 ('*Secretary-General's Report on SEA 2013*').
[12] *Investigation into Sexual Exploitation of Refugees by Aid workers in West Africa,* UN GAOR, 57th sess, Agenda Item 122, UN Doc A/57/465 (11 October 2002) 4 and 10.
[13] For allegations against guards, see *Investigation into Congo*, above n 10, 8. For allegations against the Deputy Commissioner, see Amnesty International, above n 9, 48-53.
[14] *Secretary-General's Report on SEA 2013*, above n 11, 2, 17 and 18.
[15] These are the categories which the UN uses to record allegations of SEA. Whether these acts of SEA also constitute violations of international law will be addressed in Chapter Three. See *Secretary-General's Report on SEA 2013*, above n 11, 19 (Annex II).
[16] Quoted in Michael J Jordan, *Sex charges haunt UN forces* (26 November 2004) The Christian Science Monitor <http://www.csmonitor.com/2004/1126/p06s02-wogi.html>. Last Accessed: 12 August 2014.

examined the problem from a number of different perspectives, such as moral, legal, operational, cultural, and sociological.[17] In regard to the legal literature, much of the focus has been on the individual responsibility of the alleged perpetrator or the responsibility of the State from which the alleged perpetrator came. The research in this thesis will contribute to the discussion by exploring an area of legal responsibility that has received less attention: the responsibility of the United Nations.

The organisational responsibility of the UN is important because, regardless of the individual or State responsibility that may be engaged, the peacekeepers who have committed these violations have been deployed under the auspices of the UN. As an organisation that is founded upon the values of peace, security, and universal human rights, the UN needs to take responsibility when the actions of its agents actually serve to destabilise peace, create further insecurity, and violate fundamental human rights. It will be argued in this thesis that establishing the legal accountability of the UN is a critical step to addressing and resolving the problem of SEA, to restoring the international community's faith and trust in the Organisation, and to providing justice to victims and survivors.

In this chapter, the importance of addressing the problem of SEA will be explored and a brief overview of the literature will be provided. The key research questions and the focus, scope, and limitations of the research will then be presented. This will be followed by an outline of the remaining chapters and of the alternative solution to the problem that will be

[17] See, eg, Paul Higate, 'Peacekeepers, Masculinities, and Sexual Exploitation' (2007) 10(1) *Men and Masculinities* 99; Adibeli Nduka-Agwu, ''Doing Gender' After the War: Dealing with Gender Mainstreaming and Sexual Exploitation and Abuse in UN Peace Support Operations in Liberia and Sierra Leone' (2009) 11(2) *Civil Wars* 179; Kathleen M Jennings, 'Unintended Consequences of Intimacy: Political Economies of Peacekeeping and Sex Tourism' (2010) 17(2) *International Peacekeeping* 229; Preeti Patel and Paolo Tripodi, 'Peacekeepers, HIV and the Role of Masculinity in Military Behaviour' (2007) 14(5) *International Peacekeeping* 584.

proposed at the end of this thesis. This alternative solution will be the unique contribution that this thesis will make to the discussion of the problem of SEA.

1.1 Statement of the Problem

The concept of 'sexual exploitation and abuse' has been defined by the UN Secretary-General in his 2003 bulletin, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse* (2003 Bulletin).[18] In the 2003 Bulletin, sexual exploitation was defined as 'any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.'[19] Sexual abuse was defined as 'the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.'[20]

Sexual exploitation and abuse by peacekeeping personnel violate the aims, purpose, and spirit of UN peacekeeping operations. Acts of SEA jeopardise the pivotal role that peacekeeping personnel have in the protection of civilians, the establishment of stability and security, the demobilisation and reintegration of former combatants, the promotion of the rule of law, and the rebuilding of a nation after conflict.[21] In addition, acts of SEA violate the mandates of many peacekeeping operations which expressly include the promotion of human rights[22] and 'the protection of civilians from violations of international humanitarian law and human rights abuses, including all forms of sexual and gender-based violence.'[23]

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[18] See Appendix A. Kofi A Annan, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003) 1 ('*2003 Bulletin*').
[19] Ibid 1.
[20] Ibid.
[21] *Year in Review: United Nations Peacekeeping Operations 2011* (Peace and Security Section, United Nations Department of Public Information, 2011) 2.
[22] See, eg, the United Nations Interim Administration Mission in Kosovo (UNMIK), SC Res 1244, UN SCOR, 4011th mtg, UN Doc S/RES/1244 (10 June 1999) art 11(j); the United Nations Mission in South Sudan (UNMISS), SC Res 1996, UN SCOR, 6576th mtg, UN Doc S/RES/1996 (8 July 2011) art 3(b)(iii).
[23] SC Res 1925, UN SCOR, 6324th mtg, UN Doc S/RES/1925 (28 May 2010) art 12(c).

Acts of SEA also violate the fundamental principles and purposes upon which the UN was founded. The UN Charter, for example, states that the Organisation was established to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women.'[24] The UN has facilitated the establishment of an extensive regime to protect human rights[25] and has worked to incorporate a human rights perspective into its programs, projects, and entities, including its peace and security operations.[26] As such, acts of SEA are a violation of the fundamental values and operational principles of the UN.

Sexual exploitation and abuse also has devastating effects on victims and survivors. The physical suffering experienced by survivors of SEA can include both short-term injuries, such as tearing of the vagina or anus, bruising, bleeding, or infections and diseases, as well as long-term damage, such as post-traumatic stress disorder, fistulae, infertility, or the transmission of HIV/AIDS. Acts of SEA can also cause severe psychological trauma and damage to one's sense of humanity. One non-governmental organisation (NGO) worker interviewed by the UN spoke of how she met a young woman from Uganda who had been sexually abused by a peacekeeper. She said, '[w]hen I talked to her, she had no soul in her eyes and she said that she had nightmares every day.'[27] Furthermore, acts of SEA against children can have a detrimental impact on their development and future prospects, such as increasing their rate of mortality. For example, a study by the UN found that in Cambodia,

[24] *Charter of the United Nations* preamble.
[25] For example, the UN treaty body system to oversee the implementation of international human rights treaties, such as the Human Rights Committee which oversees the implementation of the *International Covenant on Civil and Political Rights* (ICCPR).
[26] *What We Do* (2012) United Nations Office of the High Commissioner for Human Rights <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>. Last Accessed: 12 August 2014.
[27] Protection from Sexual Exploitation and Abuse (PSEA) Task Force, *To Serve with Pride: Zero Tolerance for Sexual Exploitation and Abuse* (2006) <http://www.pseataskforce.org/> ('*To Serve with Pride*'). Last Accessed: 12 August 2014.

60 to 70 per cent of prostituted children were HIV positive and that child rape victims had a high risk of suicide.[28]

In addition, sexual exploitation and abuse can jeopardise the success of peacekeeping operations as these acts can increase the difficulties experienced by communities that are recovering from armed conflict. For example, the physical and psychological damage that SEA causes to its victims can have an impact on the entire community by requiring resources, skills, and time to support and care for survivors. Communities that have already been devastated by conflict, poverty, and the breakdown of governmental and social support structures may struggle to adequately support survivors of SEA to recover from their abuse.[29] The occurrence of SEA may also cause the breakdown of community and family structures. In communities in which a woman's sexuality is determinative of her worth or of her place within a family or a community, acts such as rape or prostitution can lead to dire social and economic consequences for the survivor, her family, and her community due to the breakdown of relationships and social structures that such acts can cause.[30]

Sexual exploitation and abuse by UN peacekeeping personnel has also resulted in the phenomenon of 'peacekeeper babies'. It has been reported that many 'peacekeeper babies' have been abandoned by their fathers or ostracised by their communities.[31] Young women who give birth to 'peacekeeper babies' may be rejected by their communities for having a child outside of wedlock and the child may be stigmatised for being of mixed raced or for

[28] *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, 51st sess, Agenda Item 108, UN Doc A/51/306 (26 August 1996).
[29] *To Serve with Pride*, above n 27.
[30] 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' (2005) 14 (2) *African Security Review* 85, 86.
[31] *To Serve with Pride*, above n 27.

having a foreigner as a father.[32] The mother may also be forced to give up opportunities, such as her education, to raise the child. This may serve to further entrench any poverty or disadvantage already faced by the young woman and her baby.[33] Whilst it is difficult to provide an accurate estimate of the number of 'peacekeeper babies', these children have been reported by NGOs, journalists, academics, and the UN Office of Internal Oversight Services (OIOS).[34]

Furthermore, the arrival of UN peacekeeping personnel may create an inflated market for prostitution and those who are economically or socially vulnerable may enter into prostitution as a result. When peacekeeping forces leave, however, they may also leave behind a grossly expanded sex industry which may continue to draw future generations into a life of prostitution.[35] To demonstrate this point, an analogous example may be found in the development of the sex industry in Thailand. Prostitution grew significantly with the arrival of US military personnel for their 'rest and recreation' leave from the Vietnam war[36] and it was during this time that places such as Pattaya first developed a visible sex industry.[37] When the Vietnam war ended, Thailand was left with an inordinately high number of prostituted women and children who were then moved into servicing the growing sex tourism industry. Since then, Thailand has grown into one of the most famous

[32] Ibid.
[33] See, ibid; Ndulo, above n 8; *Report of the Office of Internal Oversight Services on its Investigation into Allegations of Sexual Exploitation and Abuse in the Ituri region (Bunia) in the United Nations Organization Mission in the Democratic Republic of the Congo*, UN GAOR, 61st sess, Agenda Items 127, 132 and 136, UN Doc A/61/841 (5 April 2007) ('*Investigation into Bunia*').
[34] See, eg, Ndulo, above n 8, 126; *Investigation into Bunia*, above n 33; *Investigation into Congo*, above n 10.
[35] Amnesty International, above n 9, 7.
[36] Wathinee Boonchalaksi and Philip Guest, *Prostitution in Thailand* (Institute for Population and Social Research Mahidol University, 1994) 8; Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Reponses to Human Trafficking in the Greater Mekong Subregion* (Routledge, 2012) 74-75.
[37] Boonchalaksi and Guest, above n 36, 8.

countries in the world for prostitution and has even been described as the 'sexual Disneyland of the world.'[38]

A similar effect may be seen with the increased demand for prostitution by peacekeeping personnel.[39] For example, in Kosovo, the Chief of Mission for the International Organization of Migration (IOM), Pasquale Lupoli, commented that the arrival of Kosovo Force (KFOR) troops and UN staff led to a 'mushrooming of night clubs' in which young women were being prostituted.[40] A report by Amnesty International observed that levels of prostitution were relatively low in Kosovo prior to 1999 and that 'all the available evidence suggests that without the presence of the international community and an influx of readymade western consumers, Kosovo would have remained a relative backwater in the Balkan trafficking industry.'[41] As the client base expands from international personnel to local residents and tourists, it is possible that these increased levels of prostitution will become a sustained practice.[42] Therefore, similar to militarised prostitution, the prostitution that develops in response to the demand by peacekeeping personnel may become institutionalised and those who enter prostitution 'may have no other option but to continue after the conflict has ceased.'[43]

In sum, acts of SEA are an affront to the purpose and spirit of peacekeeping operations. Amongst the invading enemy forces, violent rebel groups, and even the government's own military troops, UN peacekeeping personnel are expected to be the 'good guys' and to protect the local population from harm. As such, UN peacekeeping personnel 'are held to a

[38] Elizabeth Rho-Ng, 'Conscription of Asian Sex Slaves: Causes and Effects of U.S. Military Sex Colonialism in Thailand and the Call to Expand U.S. Asylum Law' (2003) 7 *Asian Law Journal* 103, 104.
[39] Jennings, above n 17.
[40] Quoted in Amnesty International, above n 9, 7.
[41] Ibid.
[42] See, eg, Jennings, above n 17.
[43] *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, UN GAOR, 51st sess, Agenda Item 108, UN Doc A/51/306 (26 August 1996) 23.

higher standard of morality than ordinary persons.'[44] This higher moral standard has been actively promoted by the UN in its internal documents, codes of conduct, and training materials, and has been upheld by many of the brave men and women who have been deployed on UN peacekeeping operations.[45] However, as former UN Secretary-General, Kofi Annan, has observed, 'this exemplary record has been clouded by the unconscionable conduct of a few individuals.'[46] Acts of SEA are particularly abhorrent when they are committed by those who are supposed to be the 'protectors' and who have taken advantage of their position of authority to obtain sexual gratification. In such cases, not only have they abused the position of power and privilege that they hold over their victims but they have also abused the trust and faith that has been placed in them by the international community. Hence, adequately addressing the problem of SEA is important not only to ensure the success of the peacekeeping operation but to also prevent the local population from being subjected to any further violations or trauma.

1.2 Definitions

1.2.1 Sexual Exploitation and Abuse

Before presenting the research question, it is necessary to define the key terms and concepts used throughout this thesis. As discussed, the definitions for 'sexual exploitation' and 'sexual abuse' have been provided by the Secretary-General in his 2003 Bulletin. Whilst this definition has not been without criticism,[47] it has formed the basis of the UN's work on

[44] Ndulo, above n 8, 145.
[45] See, eg, *To Serve with Pride*, above n 27; *2003 Bulletin*, above n 19; *We are United Nations Peacekeepers,* United Nations Peacekeeping <https://www.un.org/en/peacekeeping/documents/un_in.pdf>. Last Accessed: 12 August 2014.
[46] Prince Zeid Ra'ad Zeid Al-Hussein, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, UN GAOR, 57th sess, Agenda Item 77, UN Doc A/59/710 (24 March 2005) 1 ('*Zeid Report*').
[47] These criticisms have included that: the definition is too broad; the definition should not include sexual relationships and prostitution; the definition treats beneficiaries as passive, helpless and lacking agency; the definition denies the agency of peacekeeping personnel to decide to have sexual relationships with local women or sex workers; and the definition 'wrongly portrays all peacekeepers as sexual predators' See Olivera Simic, *Distinguishing between Exploitative and Non-Exploitative Peacekeeping Sex: The Wrongs*

the issue and is the most well-known and widely used definition of SEA within the context of peacekeeping operations. This definition will be used throughout this thesis.

In addition, the 2003 Bulletin states that acts of SEA constitute 'serious misconduct' and may be grounds for disciplinary measures, such as summary dismissal.[48] The 2003 Bulletin provides several examples of activities that are prohibited, including sexual activity with persons under 18 years of age regardless of the local age of consent, and the exchange of money, employment, goods, or services for sex.[49] Furthermore, the 2003 Bulletin 'strong[ly] discourage[s]' sexual relationships between UN personnel and beneficiaries of assistance due to the 'inherently unequal power dynamics' upon which such relationships are based.[50]

Since its issuance, the prohibitions in the 2003 Bulletin have formed part of a binding code of conduct for all UN civilian staff. In 2007, these prohibitions became incorporated into the UN Memorandum of Understanding (MoU) which is an agreement signed between the UN and a troop-contributing country.[51] This has made these prohibitions also binding upon all UN military personnel.

The former Secretary-General, Kofi Annan, has described the prohibitions in the 2003 Bulletin as constituting a 'zero-tolerance' approach towards SEA in which the UN will 'not

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of 'Zero Tolerance (PhD Thesis, The University of Melbourne, 2011) 8-9. For further criticisms, see Roisin Sarah Burke, *Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility Under International Law* (PhD Thesis, The University of Melbourne, 2012) 27-28; Olivier Simic, 'Rethinking "sexual exploitation" in UN Peacekeeping Operations' (2009) 32(4) *Women's Studies International Forum* 288; Dianne Otto, ' Making Sense of Zero Tolerance Policies in Peacekeeping Economies' in Vanessa Monro and Carl Stychin (eds), *Sexuality and the Law: Feminist Engagements* (Routledge-Cavendish, 2007) 259, 267.

[48] *2003 Bulletin*, above n 19, [3.2(a)].

[49] Ibid [3.2(b)]-[3.2(c)].

[50] Ibid [3.2(d)].

[51] *Revised Draft Model Memorandum of Understanding between the United Nations and [participating State] Contributing Resources to [the United Nations Peacekeeping Operation]*, UN GAOR, 61st sess, Agenda Item 33, UN Doc A/61/494 (3 October 2006) Annex H ('*Model MoU*').

tolerate even one instance' of SEA by its peacekeeping personnel.[52] The current Secretary-General, Ban Ki-moon, has added that this 'zero-tolerance' approach means 'zero-complacency' in regard to any credible allegations received by the UN and 'zero impunity' for any perpetrators.[53] Whilst the UN should be commended for taking a strong stance against SEA, the exact scope of the zero-tolerance approach remains unclear. The UN has not expressly articulated the requirements that a zero-tolerance approach places upon the Organisation or the consequences that this approach will have upon alleged perpetrators.

Furthermore, a number of concerns have been raised about the vagueness of the SEA definition and the broadness of the prohibitions. These issues, however, have already been discussed in the literature and will not be discussed further here.[54] The question has also been raised as to whether the prohibited acts in the 2003 Bulletin actually do 'violate universally recognized international legal norms'[55] as the Bulletin claims. This issue will be discussed further in Chapter Three.

Despite these issues, it is important to note that, as an organisation, the UN has the liberty and the authority to set the standards of conduct that it deems appropriate for its personnel and which it considers to be in the best interests of the Organisation and the communities which it serves. In the case of SEA, the Organisation has obviously made the decision that a strong 'zero-tolerance' approach is necessary to address the serious allegations that it has received. Hence, the UN should be commended for taking such a strong stance against this problem.

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[52] Kofi A Annan, *Letter dated 9 February 2005 from the Secretary-General addressed to the President of the Security Council*, UN SCOR, UN Doc S/2005/79 (9 February 2005) 1.
[53] *Conduct and Discipline*, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/issues/cdu.shtml>. Last Accessed: 12 August 2014.
[54] See, eg, Olivera Simic, *Regulation of Sexual Conduct in UN Peacekeeping Operations* (Springer, 2012) 46-78; Otto, above n 47.
[55] *2003 Bulletin*, above n 19, [3.1].

1.2.2 UN Peacekeeping Personnel

A broad range of personnel are deployed on UN peacekeeping operations with different roles, distinct legal statuses, and varying administrative, managerial, and disciplinary regimes. In this thesis, the term 'UN peacekeeping personnel' will be used to refer to all UN personnel who are deployed on peacekeeping operations.[56] The use of the term 'UN peacekeeping personnel' as an umbrella term to refer to all deployed personnel is also the manner in which the term is used by the UN.[57]

There are several categories of UN peacekeeping personnel who may be present during peacekeeping operations, such as military personnel, police personnel, and civilian personnel.[58] The UN military component is comprised of military personnel which Member States have contributed to the UN and military forces of Member States that have been placed at the disposal of the UN. There are currently more than 95,000 uniformed personnel from over 110 countries deployed as UN military troops.[59] In addition, UN military observers are placed in peacekeeping operations to act as 'the eyes and the ears of the Mission.'[60] Military observers are military officers who serve in a personal capacity to

[56] The attribution of conduct can be a complicated legal question and involves the consideration of the legal status of the UN personnel member and the circumstances of the alleged conduct. The issue of the attribution of conduct will be discussed further in Chapter Four.
[57] See, eg, *Zeid Report*, above n 46.
[58] Ibid 10-11.
[59] *Military*, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/issues/military.shtml>. Last Accessed: 12 August 2014.
[60] *United Nations Military Observers* (2009) United Nations Mission in Ethiopia and Eritrea (UNMEE) <http://unmee.unmissions.org/Default.aspx?tabid=88>. Last Accessed: 12 August 2014.

the UN.[61] There are currently 1,962 deployed military observers[62] who monitor areas of instability or conflict and report back to the UN.[63]

UN civilian police have also been deployed in almost every UN peacekeeping operation, as well as on UN special political missions.[64] UN police officers are seconded by the UN from Member States for short term contracts or are recruited directly through professional postings.[65] There are currently 17,500 UN police posted in over 100 countries.[66]

The last group of personnel on UN peacekeeping operations are UN civilian personnel, such as UN staff. UN civilian staff are employed within both the host State to the peacekeeping operation and in various UN Department of Peacekeeping Operations (DPKO) headquarters or offices around the world. A 'paramount consideration' in the appointment of staff members is securing staff who exhibit the highest standards of integrity.[67] The status of 'UN Officials' applies to all UN staff[68] which means that UN staff enjoy the privileges contained in the *Convention on the Privileges and Immunities of the United Nations* (General Convention).[69]

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[61] *Criminal Accountability of United Nations Officials and Experts on Mission: Note by the Secretariat*, UN GAOR, 62nd sess, Agenda Item 82, UN Doc A/62/329 (11 September 2007) 14 [55].
[62] *Peacekeeping Fact Sheet* (28 February 2014) United Nations Peacekeeping <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml>. Last Accessed: 12 August 2014.
[63] *International UNMO Club* <http://web.archive.org/web/20091026220218/http://geocities.com/buzim_bu9/internationalunmoclub.html>. Last Accessed: 12 August 2014.
[64] *History of the United Nations Police*, UNPOL <http://www.un.org/en/peacekeeping/sites/police/history.shtml>. Last Accessed: 12 August 2014; *What the UN Police do in the Field*, UNPOL <www.un.org/en/peacekeeping/sites/police/work.shtml>. Last Accessed: 12 August 2014.
[65] *Getting Involved*, UNPOL <http://www.un.org/en/peacekeeping/sites/police/recruitment.shtml>. Last Accessed: 12 August 2014.
[66] Peacekeeping Fact Sheet, above n 62; *History of United Nations Police*, UNPOL <http://www.un.org/en/peacekeeping/sites/police/history.shtml>. Last Accessed: 12 August 2014.
[67] *Charter of the United Nations* art 101(3).
[68] This applies to all UN staff whether recruited locally or internationally, except for locally recruited employees who are hired on an hourly basis. See *Zeid Report*, above n 46, 32.
[69] Ibid 10.

In recent times, the status of 'UN Officials' has also been extended to UN volunteers under certain circumstances. This has been achieved through Status-of-Forces Agreements (SOFAs) entered into between the Organisation and the host State which specify that UN volunteers have the status of Officials and will have the same privileges and immunities as UN staff.[70] However, whilst UN volunteers work alongside UN staff in support of peacekeeping operations, they are not UN staff and are not subject to UN staff rules and regulations.[71] Nonetheless, UN volunteers may be considered to be UN personnel for the purposes of this thesis.

1.2.3 UN Peacekeeping Operations

For over 60 years, UN peacekeeping operations have played an important role in stabilising countries during and after armed conflict. Since 1948, 68 UN peacekeeping operations have been deployed,[72] with 16 missions currently in operation.[73] UN peacekeeping operations

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[70] Ibid 40.

[71] Anthony J Miller, 'Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations' (2006) 39 *Cornell International Law Journal* 71, 78.

[72] *History of Peacekeeping*, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/operations/history.shtml>. Last Accessed: 12 August 2014.

[73] *What is Peacekeeping?*, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>. Last Accessed: 12 August 2014.
The 16 current peacekeeping operations are:
- United Nations Mission for the Referendum in Western Sahara (MINURSO)
- United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA)
- United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)
- United Nations Stabilization Mission in Haiti (MINUSTAH)
- United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)
- African Union-United Nations Hybrid Operation in Darfur (UNAMID)
- United Nations Disengagement Observer Force (UNDOF)
- United Nations Interim Force in Lebanon (UNIFIL)
- United Nations Interim Security Force for Abyei (UNISFA)
- United Nations Mission in the Republic of South Sudan (UNMISS)
- United Nations Operation in Côte d'Ivoire (UNOCI)
- United Nations Interim Administration Mission in Kosovo (UNMIK)
- United Nations Mission in Liberia (UNMIL)
- United Nations Military Observer Group in India and Pakistan (UNMOGIP)
- United Nations Truce Supervision Organization (UNTSO)
- United Nations Peacekeeping Force in Cyprus (UNFICYP)
In addition, there is one special political mission in operation:
–United Nations Assistance Mission in Afghanistan (UNAMA).

are deployed with the consent of the host State under the authority of the UN Security Council and its Chapter VII powers. The impartiality of UN peacekeeping personnel and the sense of international consensus and cooperation that underpin their deployment are some of the unique features that signify the importance and ensure the success of UN peacekeeping operations.

UN operations to support peace and security may be deployed during different levels of armed conflict and may undertake a range of tasks. These operations include: 'peacemaking' which involves the resolution of ongoing conflicts and diplomatic actions to bring hostile parties to a negotiated agreement; 'peace enforcement' which involves the use of coercive measures, including military force, to restore international peace and security as authorised by the Security Council under its Chapter VII powers; and 'peace building' which aims to reduce the risk of relapse into conflict by building the foundations for sustainable peace, such as through restoring the core organs and functions of a State.[74] 'Peacekeeping' missions, which have traditionally been deployed to support the implementation of a ceasefire or a peace agreement, may also involve elements of peacemaking, peace enforcement, and peace building. Similar to the practice of the UN, in this thesis the term 'UN peacekeeping operation' will be used as an umbrella term to refer to the various operations conducted under the auspices of the UN that may involve one or more of these peace-oriented activities.[75]

[74] *Peace and Security*, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/operations/peace.shtml>. Last Accessed: 12 August 2014.
[75] See, eg, ibid.

1.2.4 Accountability

The importance of accountability has 'gained widespread acceptance' amongst legal scholars working on the regulation of international organisations.[76] As international organisations grow in the scope of their authority and activity, the role of accountability has been seen as particularly important for curtailing potential abuses of power and privilege.[77]

Although the concept of accountability has been extensively discussed in the literature,[78] no clear consensus has emerged on a definition for the term. The Oxford dictionary defines 'accountability' as the condition of being 'required or expected to justify actions or decisions.'[79] More specifically, Staffan I. Lindberg, in his survey of the literature on accountability, has argued that the defining characteristics of accountability are:

- an agent or institution who is to give an account;
- an area or domain subject to accountability;
- an agent or institution *to whom* the agent is to give account;
- the right of the institution to require the agent to explain or justify decisions with regard to the domain of accountability; and,

[76] August Reinisch, 'Accountability of International Organisations according to National Law' (2005) 36 *Netherlands Yearbook of International Law* 119, 121.
[77] See, eg, Marten Zwanenburg, *Accountability of Peace Support Operations* (Martin Nijhoff Publishers, 2005) 61; Richard Mulgan, *Holding Power to Account: Accountability in Modern Democracies* (Pelgrave, 2003); Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) *European Law Journal* 447.
[78] See, eg, Craig Thomas Borowiak, *Accountability and Democracy: The Pitfalls and Promise of Popular Control* (Oxford University Press, 2011); Guy Canivet, Mads Tønnesson Andenæs and Duncan Fairgrieve, *Independence, Accountability, and the Judiciary* (British Institute of International and Comparative Law, 2006); Dave Owen, Carol Adams and Rob Gray, *Accounting & Accountability: Changes and Challenges in Corporate Social and Environmental Reporting* (Prentice Hall, 1996).
[79] 'Accountability' is defined as 'the fact or condition of being accountable', in which 'accountable' is defined as 'required or expected to justify actions or decisions; responsible.' See *Oxford Dictionaries* <http://www.oxforddictionaries.com/>. Last Accessed: 12 August 2014. For further discussion, see International Law Association, *Accountability of International Organisations* (Conference Report, Berlin, 2004) 5-6.

- the right of the institution to sanction the agent if the agent fails to adequately explain decisions in regard to the domain of accountability.[80]

For the purposes of this thesis, which focuses on legal accountability, Lindberg's characteristics may be reformulated to be: a legal actor who is to give account; for an area of accountability as defined under international law; to an institution which is able to assess matters of international law; and, to an institution which is able to require the legal actor to explain their actions and to provide sanctions if needed. Therefore, when the term 'legal accountability' is used throughout this thesis, it will be referring to this process.

1.3 The Literature on the Issue and the Focus of this Thesis

There are a number of different forms of legal accountability that may be relevant to the issue of SEA on UN peacekeeping operations. This includes the individual accountability of the alleged perpetrator, the accountability of the sending State from which the perpetrator came, the accountability of the host State in which the act occurred, and the organisational accountability of the UN. Much of the literature has focused on the accountability of the individual or of the State. One area of accountability that has received less attention has been the organisational accountability of the UN. However, this is an important area of accountability as UN peacekeeping operations are, after all, conducted under the auspices of the UN.

Furthermore, when the organisational accountability of the UN has been considered, the solutions proposed have often been administrative rather than legal in nature. Much of the literature has focused on the administrative changes that the Organisation should undertake to address the issue of SEA, rather than an analysis of the UN's legal

[80] Staffan I Lindberg, 'Accountability: The Core Concept and Its Subtypes' (Working Paper No 1, Overseas Development Institute, April 2009) 8.

responsibilities under international law and how its acts or omissions may have breached its obligations. Hence, the issue of the *legal* accountability of the UN has rarely been addressed. This section will examine this gap in the literature. An overview of the research conducted by the UN, NGOs, and academics will be presented to demonstrate that the legal accountability of the UN still requires further research and debate.

The UN has conducted several investigations into the issue of SEA. This has included investigations into specific peacekeeping operations as well as 'bigger picture' analyses of the problem. These reports have often focused on the responsibility of the individual perpetrator and the administrative changes that the Organisation should undertake. For example, the first comprehensive analysis undertaken by the UN was the *Comprehensive Review on the Whole Question of Peacekeeping Operations* (Zeid report).[81] Released in 2005, the Zeid report provided a number of recommendations for administrative changes, such as the standardisation of codes of conduct and the establishment of a permanent investigative mechanism to handle complex cases of serious misconduct.[82] The Zeid report also made recommendations for the disciplinary, financial, and criminal accountability of individual perpetrators as well as the individual accountability of managers and commanders.[83]

Other UN investigations into specific peacekeeping operations, such as in the Congo and West Africa, have also focused on individual accountability and on administrative measures. For example, investigations by the UN Office of Internal Oversight Services (OIOS) have recommended, *inter alia,* the implementation of a rapid-response detection program,[84] the increased involvement of senior managers,[85] the regular briefing of troops,[86] and the

[81] *Zeid Report*, above n 46, 2.
[82] Ibid 4-5, 13, and 15-16.
[83] Ibid 5-6 and 17-24.
[84] *Investigation into Congo*, above n 10, 12.
[85] Ibid.

establishment of focal points in the field for the disclosure of sexual relationships between UN personnel and refugees.[87] Whilst all of these recommendations are important, they have focused on administrative changes that the UN should undertake to more effectively deal with individual perpetrators. Hence, these reports have not considered the legal accountability of the Organisation for these violations.

The UN has, however, considered the legal accountability of individual perpetrators. Following a recommendation by the Zeid report, the UN Secretary-General established a Group of Legal Experts (GLE) in 2006 to investigate the accountability of UN staff and experts on mission for criminal acts committed during peacekeeping operations.[88] The report of the GLE made several recommendations regarding the prosecution of individuals[89] and the adoption of a new international convention on the criminal accountability of UN officials and experts on mission.[90] Nonetheless, the GLE was not given the scope to consider the legal accountability of the UN as an organisation for these criminal acts.

Different organisations within civil society have also conducted research on and provided recommendations for addressing the problem of SEA on peacekeeping operations. For example, the Stimson Centre[91] has published an extensive report on improving the criminal accountability of UN officials and experts on mission and on the jurisdiction of different

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[86] Ibid.
[87] *Investigation into West Africa*, above n 12, 17-19.
[88] Pursuant to *Support Account for Peacekeeping Operations*, GA Res 59/300, UN GAOR, 59th sess, Agenda Item 123, UN Doc A/RES/59/301 (31 August 2005, adopted 22 June 2005).
[89] Group of Legal Experts, *Ensuring the Accountability of United Nations Staff and Experts on Mission with respect to Criminal Acts committed in Peacekeeping Operations*, UN GAOR, 66th sess, Agenda Item 32, UN Doc A/60/980 (16 August 2006) 14–17.
[90] Ibid 17 and Annex III. The recommendation for a new international convention has not progressed much further due to the lack of support from States. The recommendations in the GLE report will be discussed further in Chapter Two.
[91] The Stimson Centre is a non-profit institution which is devoted to enhancing international peace and security through research and outreach. See *The Stimson Centre* <http://www.stimson.org>. Last Accessed: 12 August 2014.

States to try these crimes.[92] Amnesty International has investigated the situation in Kosovo and provided a range of recommendations regarding investigations and prosecutions, the lifting of immunities, the enforcement of the 'off-limits' list, and ensuring greater transparency.[93] Refugees International has investigated the problem of SEA by UN peacekeepers in Liberia and Haiti and has made recommendations for the incorporation of gender principles into UN peacekeeping missions, changing the attitudes of senior management, improving access to the UN complaints system, and empowering women in local communities.[94] Again, whilst many of these NGO recommendations are important, similar to the investigations by the UN, most of them have focused on the individual accountability of the perpetrator and on administrative changes that the UN should implement. The research by NGOs has not investigated the organisational accountability of the UN under international law and the mechanisms through which the legal accountability of the UN can be established.

In regard to the academic literature on the issue, the discussions of legal accountability have similarly focused on the individual perpetrator and, in particular, on military personnel. For example, the prosecution of perpetrators has been a subject of intense debate. This has included discussions of whether the prosecution of peacekeeping troops by the International Criminal Court (ICC) is possible[95] and proposals for the establishment of a

[92] William J Durch, Katherine N Andrews, Madeline L England and Matthew C Weed, 'Improving Criminal Accountability in United Nations Peace Operations' (Stimson Centre Report No 65, The Henry L Stimson Center, June 2009).
[93] Amnesty International, above n 9, 56.
[94] Sarah Martin, 'Must Boys be Boys?: Ending Sexual Exploitation & Abuse in UN Peacekeeping Missions' (Refugees International, 2005).
[95] Melanie O'Brien, 'Prosecuting Peacekeepers in the ICC for Human Trafficking' (2006) 1 *Intercultural Human Rights Law Review* 281; Melanie O'Brien, 'Sexual Exploitation and Beyond: Using the Rome Statute of the International Criminal Court to Prosecute UN Peacekeepers for Gender-based Crimes' (2011) 11(4) *International Criminal Law Review* 803; Noelle Quénivet, 'The Role of the International Criminal Court in the Prosecution of Peacekeepers for Sexual Offenses' in Roberta Arnold (ed), *Law Enforcement within the Framework of Peace Support Operations* (Martinus Nijhoff, 2008) 399; Jennifer Murray, 'Who will Police the Peace-builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina' (2003) 34 *Columbia Human*

new court to try peacekeeping personnel, such as a 'tri-hybrid court' involving the sending State, the host State, and the UN.[96] The role of national courts has also been considered. For instance, it has been proposed that the UN Security Council should put forward a resolution calling on troop-contributing countries to adopt legislation conferring extra-territorial jurisdiction on their courts to prosecute acts of SEA committed by their soldiers whilst overseas.[97]

A further area of interest in the academic literature has been the responsibility of States for the troops that they have committed to the UN. This literature has often involved complex arguments around the legal status of UN troops, the legal basis for the attribution of responsibility, and the question of who has command and control over UN peacekeeping troops.[98]

Similar questions have been raised when the matter has appeared before domestic and regional courts.[99] The case law on this issue, however, is limited and controversial. Different courts have adopted different tests to determine the level of State responsibility for UN troops, such as tests of 'ultimate authority and control,'[100] 'effective control'[101] and

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Rights Law Review 475, 511-517; Marco Odello, 'Tackling Criminal Acts in Peacekeeping Operations: The Accountability of Peacekeepers' (2010) 15(2) *Journal of Conflict & Security Law* 347, 389.

[96] Roisin Burke, 'UN Military Peacekeeper Complicity in Sexual Abuse: The ICC or a Tri-hybrid Court' in Morten Bergsmo (ed), *Thematic Prosecution of International Sex Crimes* (Torkel Asphal, 2012) 317, 380-408.

[97] Ndulo, above n 8, 159.

[98] See, eg, Tom Dannenbaum, 'Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers' (2010) 51 *Harvard International Law Journal* 113; Roisin Burke, 'Attribution of Responsibility: Sexual Abuse and Exploitation, and Effective Control of Blue Helmets' (2012) 16(1) *Journal of International Peacekeeping* 1.

[99] See, eg, *HN v The Netherlands* [District Court of the Hague] Case No 265615/HA ZA 06-1671, 10 September 2008; *Mothers of Srebrenica et al v State of The Netherlands and the United Nations* [Supreme Court of The Netherlands] Case No 10/04437, 13 April 2012.

[100] *Behrami v France* and *Saramati v France, Germany and Norway* (European Court of Human Rights, Application Nos 71412/01 and 78166/01, 2 May 2007) 133-35 ('*Behrami* and *Saramati*').

[101] Ibid 30-31.

'operational command and control.'[102] The academic commentary on these tests has been similarly varied, from broad support for the tests applied to disappointment and disapproval over a particular court's ruling.[103] An analysis of State responsibility and of the tests for the attribution of responsibility, however, are beyond the scope of this thesis. For the purpose of this thesis, it is sufficient to note that the academic literature and case law have focused on the responsibility of States, rather than the responsibility of the UN, and have focused on the misconduct of peacekeeping troops rather than on other categories of UN personnel.

This brief literature review has demonstrated that there has been significant interest in establishing individual and State responsibility for acts of SEA on peacekeeping operations. However, the issue of the organisational accountability of the UN has yet to be examined in great detail. Although there has been some research in this area, such as considering the UN's liability as an employer for its civilian peacekeeping personnel,[104] many of the issues surrounding the legal accountability of the UN remain unresolved. Even when the responsibility of the UN has been examined, the solutions proposed have often been administrative in nature.[105] Whilst these administrative changes are important, they do not go to the heart of 'accountability' which, as discussed, involves a consideration of how the Organisation should be required to 'give account for', or to explain and justify, the violations

[102] *HN v The Netherlands* [District Court of the Hague] Case No 265615/HA ZA 06-1671 (10 September 2008) [4.9].
[103] See, eg, Dannenbaum, above n 98; Antonio Cassese, 'The Nicaragua and Tadic Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia' (2007) 18 *European Journal of International Law* 649, 667; Marko Milanovic and Tatjana Papic, 'As Bad as it Gets: The European Court of Human Rights' Behrami and Saramati Decision and General International Law' (2009) 58 *International and Comparative Law Quarterly* 267, 282; Kjetil Mujezinovic Larsen, 'Attribution of Conduct in Peace Operations: The 'Ultimate Authority and Control' Test' (2008) 19(3) *The European Journal of International Law* 509; Guido den Dekker and Jessica Schechinger, *The Immunity of the United Nations before the Dutch Courts Revisited* (4 June 2010) The Hague Justice Portal <http://www.haguejusticeportal.net/index.php?id=11748>. Last Accessed: 12 August 2014.
[104] Catherine Sweetser, 'Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel' (2008) 83(5) *NYU Law Review* 1643.
[105] *Zeid Report*, above n 46, 5 and 18.

that have occurred. Hence, the focus of this thesis is to address the issue of the legal accountability of the UN for acts of SEA on its peacekeeping operations.

1.4 The Scope and Limitations of This Thesis

In this section, the scope and limitations of the thesis will be outlined. The first limitation in scope concerns the attribution of responsibility to the UN. The accountability of the UN can only be established for peacekeeping personnel whose actions may be attributed to the Organisation. The most straightforward case is in regard to its civilian personnel, such as UN staff. UN staff are 'international civil servants' and according to the *Staff Rules and Staff Regulations of the United Nations*, '[t]heir responsibilities as staff members are… exclusively international.'[106] As such, they 'shall neither seek nor accept instructions from any Government.'[107] Hence, UN staff are agents of the Organisation rather than agents of any particular State. The term 'agent' has been defined in the *Articles on the Responsibility of International Organizations* (ARIO) as 'an official or other person… who is charged by the Organization with carrying out, or helping to carry out, one of its functions.'[108] Pursuant to article 6 of the ARIO, the conduct of an agent 'shall be considered an act of that organization under international law.'[109] Hence, the actions of UN staff may be attributed to the Organisation.

The attribution of responsibility for the actions of UN military personnel, however, is much more complicated. States have rarely relinquished criminal jurisdiction over their troops. This can be seen in the Model MoU, signed between the home State and the UN, which provides that the troop contributing country has 'exclusive jurisdiction in respect to any

[106] *Staff Rules and Staff Regulations of the United Nations*, UN Doc ST/SGB/2013/3 (1 January 2013) regulation 1.1.
[107] Ibid art I, regulation 1.2.
[108] *Articles on the Responsibilities of International Organizations*, UN GAOR, 63rd sess, UN Doc A/CN.4/L.778 (30 May 2011) art 2(d) ('*ARIO*').
[109] Ibid art 6.

crimes or offences that may be committed' by its military personnel.[110] This 'exclusive jurisdiction' is reiterated in the Status-of-Forces Agreement (SOFA) which sets out the terms and conditions for the deployment of forces into a host State.[111] Therefore, since most UN peacekeeping troops remain under the jurisdiction of their home State, the attribution of their misconduct to the UN can be difficult.

Despite the long-standing legal position that the sending State maintains jurisdiction over its military personnel, a recent turn in the jurisprudence of the European Court of Human Rights (ECtHR) has started to find otherwise. In *Behrami and Behrami v France* and *Saramati v France, Germany and Norway*, the ECtHR found that, under certain circumstances, the misconduct of UN peacekeeping troops may be 'in principle, "attributable" to the UN'[112] if it can be demonstrated that the UN had a level of authority and control over the troops at the time of the incident.[113]

The decision in *Behrami* and *Saramati* has been followed in a number of subsequent cases. For example, in *Berić and Others v Bosnia and Herzegovina*,[114] *Gajic v Germany*[115] and *Kalinić and Bilbija v Bosnia and Herzegovina*,[116] the ECtHR also found that the impugned acts were attributable to the UN and not to the State.[117] Nonetheless, the decision in *Behrami* and

[110] *Model MoU*, above n 51, art 7(1) quinquiens.
[111] *Model Status-of-Forces Agreement for Peacekeeping Operations*, UN GAOR, 45th sess, Agenda Item 76, UN Doc A/45/594 (9 October 1990).
[112] *Behrami* and *Saramati* (European Court of Human Rights, Application Nos 71412/01 and 78166/01 (2 May 2007) [141] and [143].
[113] Ibid. The cases of *Behrami* and *Saramti* will be discussed further in Chapter Four.
[114] *Berić and Others v Bosnia and Herzegovina* (European Court of Human Rights, Application Nos 36357/04, 36360/04, 38346/04, 41705/04, 45190/04, 45578/04, 45579/04, 45580/04, 91/05, 97/05, 100/05, 101/05, 1211/05, 1123/05, 1125/05, 1129/05, 1132/05, 1133/05, 1169/05, 1172/05, 1175/05, 1177/05, 1180/05, 1185/05, 20793/05 and 25496/05, 16 October 2007).
[115] *Gajic v Germany* (European Court of Human Rights, Application No 31446/02, 28 August 2007).
[116] *Kalinić and Bilbija v Bosnia and Herzegovina* (European Court of Human Rights, Application Nos 45541/04 and 16587/07, 13 May 2008).
[117] Siobhan Wills, *Protecting Civilians: The Obligations of Peacekeepers* (Oxford University Press, 2009) 158.

Saramati has been subject to intense criticism,[118] mainly for its determination of 'control.'[119] Whilst these debates are beyond the scope of this thesis, for the purposes of the present thesis it is sufficient to note that, in some cases, the misconduct of peacekeeping troops may be attributed to the UN. Hence, the focus of this thesis will be on the conduct that *can* be attributed to the UN, whether that conduct was undertaken by UN civilian personnel or UN military troops, and not on conduct that only engages the responsibility of the perpetrator or of the State.

The focus of this thesis will also be on acts of SEA perpetrated against women and children, as these acts are the most prevalent examples of SEA. Acts of SEA are undoubtedly committed against a range of victims and there is growing recognition that sexual violence in conflict and post-conflict situations is also committed against men.[120] For example, in the recent *Declaration of Commitment to End Sexual Violence in Conflict*, it was acknowledged that 'men and boys are [also] victims of this crime.'[121] However, the research undertaken in this thesis has found that acts of SEA by peacekeeping personnel have largely been perpetrated by men against women and children.[122] This may be because the nature of the

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[118] Burke, above n 47; Larsen, above n 103; Aurel Sari, 'Jurisdiction and International Responsibility in Peace Support Operations: The Behrami and Saramati Cases' (2008) 8(1) *Human Rights Law Review* 151; Milanovic and Papic, above n 103; Alexander Breitegger 'Sacrificing the Effectiveness of the *European Convention on Human Rights* on the Altar of the Effective Functioning of Peace Support Operations; A Critique of *Behrami* and *Saramati* and *Al Jeddaí*' (2009) 11 *International Community Law Review* 155; Heike Kriegger, 'A Credibility Gap: the *Behrami* and *Saramati* Decision in the European Court of Human Rights' (2009) 13 *Journal of International Peacekeeping* 159; Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge, 2011) 108-113; Giorgio Gaja, Special Rapporteur, *Seventh Report on Responsibility of International Organizations*, UN Doc A/CN.4/610 (27 March 2009) [26].

[119] Gabrielle Simm, 'International Law as a Regulatory Framework for Sexual Crimes Committed by Peacekeepers' (2011) 16(3) *Journal of Conflict & Security Law* 473, 492.

[120] See, eg, Valorie K Vodjik, 'Sexual Violence Against Men and Women in War: A Masculinities Approach' (Research Paper No 217, University of Tennessee Legal Studies, July 2013).

[121] *A Declaration of Commitment to End Sexual Violence in Conflict* <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244849/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT__TO_PRINT....pdf> 2. Last Accessed: 12 August 2014.

[122] This finding reflects global statistics which demonstrate that acts of SEA in non-peacekeeping context are also largely committed against women and children. See, eg, Facts and Figures: Ending Violence against Women, A Pandemic in Diverse Forms (2014) *UN Women* <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>. Last Accessed: 12 August 2014.

sexual acts committed by peacekeeping personnel is different to the nature of the sexual acts committed by combatants. The allegations reported against peacekeeping personnel have largely involved the pursuit of sexual pleasure and, hence, those targeted have largely been women and children. This is different to acts of SEA by combatants who perpetrate sexual violence against their 'enemies' as a part of warfare and whose victims, therefore, include 'enemy' men, women and children. Hence, the different motivation behind acts of SEA by UN peacekeepers as compared to combatants means that the problem of SEA by peacekeeping personnel has been largely confined to women and children. This does not mean, however, that acts of SEA by UN personnel against adult men have not occurred. If, in the future, acts of SEA against adult men are reported, then these allegations also warrant prompt investigation and resolution. However, the acts of SEA described in this thesis will generally concern women and children because these are the acts that have been reported thus far. Nonetheless, the discussion and proposed solution will be applicable to all victims of SEA.

Lastly, the analysis and solution presented in this thesis will address the problem of SEA in general and will not focus on any peacekeeping operation in specific. Detailed case studies of SEA on specific missions, such as West Africa,[123] the Congo,[124] and Kosovo,[125] are already available, and these examples will be drawn upon as needed. However, the aim of this thesis is to propose a broad solution that may be applicable to all instances of SEA regardless of the specific peacekeeping operation in which it occurred. The solution proposed in this thesis may also be applicable to instances of SEA that occur outside of peacekeeping operations. As discussed, allegations of SEA have been received across a range of UN

[123] *Investigation into West Africa*, above n 12.
[124] *Investigation into the Congo*, above n 10; *Investigation into Bunia*, above n 33.
[125] Amnesty International, above n 9.

departments, agencies, funds, and programmes.[126] For example, in 2009 and 2010, almost one-third of the allegations of SEA received by the UN were not in the context of peacekeeping operations.[127] By considering the issue of the legal accountability of the UN more broadly, the solution proposed in this thesis may also cover these other incidences of SEA. Nonetheless, the majority of allegations of SEA have been, and continue to be, received within the context of UN peacekeeping operations and it is this context that will be the focus of this thesis.

In sum, this thesis will examine the problem of establishing the organisational accountability of the UN for allegations of SEA on its peacekeeping operations. The focus of this thesis will be on the organisational accountability of the UN, rather than on the individual accountability of the alleged perpetrator or the responsibility of States. In addition, to be able to hold the UN to account, the conduct must be attributable to the UN and it is these instances of misconduct which will be of concern. The discussion will also focus on acts of SEA perpetrated against women and children, which constitute the most prevalent examples of SEA thus far, and on acts of SEA within the context of peacekeeping operations, where the majority of allegations of SEA have arisen. However, this is not to discount or diminish any incidences of SEA against adult men or any incidences that have occurred outside of peacekeeping operations. These incidences of SEA are also important and the solution proposed in this thesis will be broad enough to cover these incidences of SEA as well.

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[126] *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 65th sess, Agenda Item 134, UN Doc A/65/742 (18 February 2011) 2.
[127] *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 64th sess, Agenda Item 137 and 146, UN Doc A/64/669 (18 February 2010) 5; *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 63rd sess, Agenda Item 123 and 132, UN Doc A/63/720 (17 February 2009) 5.

1.5 The Importance of This Thesis

Establishing the organisational accountability of the UN is important for a number of reasons. First, establishing the organisational accountability of the UN is important for the Organisation itself. For the UN to continue to be an effective actor in the international sphere, the Organisation needs to maintain its legitimacy, credibility, and reputation in the eyes of the international community. The UN's reputation, however, has been undeniably tarnished by the sexual misconduct of some of its peacekeeping personnel. Whilst the prevention of these violations would have been preferable, how the UN acts in response to these violations and the level of accountability that it is willing to accept will go a long way towards restoring its reputation and credibility.

Second, establishing a process through which the UN is to 'give account' for its actions or omissions may also be beneficial for the Organisation because it can provide the UN with an opportunity to confront and explore the problem of SEA further. Through such a process, it may be determined why a particular instance of SEA has occurred despite the Organisation's sincere commitment to eradicate the problem. Such an investigation may provide the UN with valuable insight into where its systems and processes have failed to prevent SEA and how the UN may avoid the reoccurrence of SEA in the future. Hence, establishing the organisational accountability of the UN may also be beneficial for the Organisation.

Third, establishing the legal accountability of the UN is important for maintaining a sense of legitimacy, coherency, and justice within the system of international law. The UN has been recognised as an international legal person and enjoys certain international legal rights.[128] Alongside these legal rights, the Organisation should also have certain legal responsibilities.

[128] *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174.

It would be a perversion of the international legal order for a legal entity to exist which has actively claimed its rights, for example, in front of the International Court of Justice,[129] but which then lacks the legal responsibilities that may arguably accompany such legal rights. Therefore, similar to the legal accountability that is expected of States for the action of its troops, it is also necessary to consider the legal accountability of the UN for the actions of the peacekeeping personnel who have been deployed under its name.

Finally, ensuring that the UN is held organisationally accountable is important for victims and survivors of SEA. It is important to give survivors the space to be heard, to be able to pursue justice, and to be offered remedies and redress as needed. Survivors of SEA have a human right to an effective remedy and deserve access to justice and reparation for the harms that they have suffered.[130] Hence, the greatest benefit of ensuring the organisational accountability of the UN is the potential restoration of dignity and worth to survivors of SEA.

1.6 The Research Question

In this thesis, the question will be asked:

> How can the organisational accountability of the United Nations be established for acts of sexual exploitation and abuse committed by UN personnel on its peacekeeping operations?

To answer this question, several sub-questions need to be addressed. These questions are:

1. Are acts of SEA prohibited under international law?

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[129] Ibid.

[130] *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res 60/147, UN GAOR, 60th session, 64th plen mtg, Supp No 49, UN Doc A/RES/60/147 (21 March 2006, adopted 16 December 2005) art VIII and IX.

Legal accountability for acts of SEA cannot exist unless it can first be demonstrated that acts of SEA are, in fact, violations of international law.

2. Can international organisations, such as the UN, be held legally accountable for violations of international law?

International law has traditionally been developed by States and for States. As international organisations are not States, it must be established if, how, and when an international organisation is actually bound by international law and, therefore, when it may be held accountable for violations of international law.

3. If the UN may be held accountable for violations of international law, *how* can the legal accountability of the UN be established?

This is a question about the process of the law: before which judicial body, tribunal, or other forum can the UN be held to account? This question requires an analysis of how the accountability of the UN is, or is not, being achieved within the current legal system.

4. Finally, if there is currently no judicial body which is able to hold the UN to account, how *should* the legal accountability of the UN be established?

The final question moves towards finding a solution to the problem of establishing the legal accountability of the UN. The answer to this question involves the consideration of what may be done in the future to ensure that the UN can be held legally accountable for any violations of international law that have been committed under its name.

1.7 Outline of Chapters

To begin this thesis, Chapter One has provided an overview of the problem of SEA on UN peacekeeping operations and the research that has already been undertaken on the issue. The importance of addressing the organisational accountability of the UN has been demonstrated and the scope and limitations of the research have been discussed. The following chapters will examine the problem of SEA on peacekeeping operations in greater

detail, analyse the legal prohibitions against SEA, examine the obstacles that currently prevent the UN from being held legally accountable for these violations, and propose one possible solution to the problem.

In Chapter Two, the importance of addressing the problem of SEA on UN peacekeeping operations will be explored further. The background information and 'facts and figures' of the problem will be presented including an overview of the occurrence of SEA to date and the actions that the UN has taken in response to the issue. The discussion will demonstrate that acts of SEA are an abuse of the authority and trust that has been placed in UN peacekeeping personnel. In this chapter, it will be shown that the problem of SEA by peacekeeping personnel is a widespread, systemic, and ongoing problem that is worthy of further research and debate.

In Chapter Three, a legal analysis will be undertaken to determine the prohibitions that currently exist against SEA in international law. Four areas of international law will be examined: international humanitarian law, international criminal law, the international law on human trafficking, and international human rights law. The analysis will demonstrate that international criminal law can provide guidance for interpreting the concept of 'sexual abuse' and that the international law on human trafficking is useful for understanding the concept of 'sexual exploitation'. It will be argued, however, that international human rights law, with its broad scope and application, provides the best legal framework to 'capture' many of the acts of SEA that are prohibited in the 2003 Bulletin. Therefore, in Chapter Three, it will be argued that framing acts of SEA by peacekeeping personnel as a violation of human rights may be the best way to establish that acts of SEA are also a violation of international law.

In Chapter Four, the theoretical and legal principles underpinning the responsibility of international organisations will be examined. The discussion will begin with a consideration of the international legal personality of the UN and its legal rights and responsibilities. Then, the importance of the *Articles on the Responsibilities of International Organizations (*ARIO) will be considered. This will include a discussion of the scope of the legal responsibilities that have been codified within the ARIO and the application of the ARIO to the case of SEA on UN peacekeeping operations. It will be demonstrated that the legal responsibilities of international organisations is a developing area of law and, in a strict legal sense, the responsibility of the UN for acts of SEA can be difficult to establish. However, the codification within the ARIO of the principle that international organisations *should* be legally responsible for international wrongful acts demonstrates that this is the direction in which international law is developing.

In Chapter Five, the practical application of this principle will be considered. An examination of the current legal system will demonstrate that there are several limitations to being able to hold the UN to account for its actions. The three main limitations are: first, the difficulty of determining the international laws that are applicable to the UN and, therefore, the breaches of law that the UN may be held accountable for; second, the difficulty of being able to identify an international court in which proceedings may be brought against the UN due to limitations *ratione materiae* and *ratione personae*; and, third, the difficulty of being able to bring proceedings against the UN before domestic courts due to the Organisation's extensive legal immunities. The analysis in Chapter Five will demonstrate that the current legal system provides little satisfaction for survivors of SEA who wish to seek redress or remedy for the violations that they have suffered.

Taking into consideration these limitations, it will be suggested in Chapter Six that the solution to the problem may lie elsewhere. In Chapter Six, the discussion will move beyond the more traditional approach of courts and tribunals to consider the potential role of the UN treaty bodies in assessing allegations of human rights violations by the UN. In particular, considering the nature of SEA, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) will be used as an example to explore how the UN treaty bodies may provide an effective, albeit quasi-judicial, forum to which individuals may bring their allegations of SEA. The benefits for individual survivors, the UN, and the international community will be explored, as well as the changes in law and practice that will be needed to establish such a process. Hence, in Chapter Six, it will be proposed that the UN treaty bodies should be empowered with the competence to examine communications from individuals on allegations of SEA against the UN. In this chapter, it will be argued that this proposal may be an effective, pragmatic, and economical solution to the problem of establishing the organisational accountability of the UN.

In Chapter Seven, the conclusion to the thesis will be presented. Returning to the research question, the conclusion will demonstrate how the thesis has addressed the problem of establishing the organisational accountability of the UN for acts of SEA. The unique contribution of this thesis will be explored further and the benefits and limitations of the proposed solution will be examined. In addition, the discussion will look beyond the case of SEA on UN peacekeeping operations and will consider how the solution proposed in this thesis may be applicable to other types of human rights violations as well. Finally, areas for potential future research will be suggested, before the thesis comes to an end.

In sum, whilst the solution to the problem of SEA on UN peacekeeping operations may be subject to intense debate, what is not under debate is the seriousness of the problem and

the need for further research and action. The aim of this thesis is to examine one area of accountability that has not yet been adequately addressed, the organisational accountability of the UN, and to propose a solution that has not yet been considered, the role of the UN treaty bodies. Whilst the research in this thesis does not purport to resolve the problem of SEA by UN peacekeeping personnel, it does aim to contribute a new and innovative angle from which to tackle one aspect of the problem. UN peacekeeping operations are, after all, conducted under the authority and auspices of the UN. Hence, it also becomes relevant to ask: how can we ensure that the UN is held accountable for these violations? This is the question that this thesis will seek to both ask and answer.

CHAPTER 2

The Problem of Sexual Exploitation and Abuse by UN Peacekeeping Personnel

The extent of sexual exploitation and abuse (SEA) that occurs on peacekeeping operations is extremely difficult to estimate. Many obstacles are faced by survivors in reporting these violations including: the general atmosphere of insecurity created by armed conflict which may prevent survivors from reaching authorities to report the abuse; the displacement and disruption of community networks which may leave survivors feeling disoriented, isolated, and unsupported; language barriers between the survivor and United Nations (UN) personnel which can cause communication difficulties; and power imbalances between the local population and international personnel which can create a sense of hesitation, fear, or hopelessness. Despite these difficulties, many survivors have bravely spoken out about the sexual violations that they have experienced. These testimonies of SEA have been collected by the UN, non-governmental organisations (NGOs), service providers, the media, researchers, and academics, and have detailed the abuse and exploitation that some international personnel have inflicted upon the local community.

In this chapter, the occurrence of the SEA, as defined in the UN Secretary-General's 2003 Bulletin,[1] will be described. The prohibitions in the 2003 Bulletin include, *inter alia*, rape, sexual violence, sexual exploitation, sex trafficking, sex with minors, and the exchange of money, employment, goods and services for sex, including prostitution. Although allegations of SEA have been received from many peacekeeping operations,[2] a comprehensive review of all peacekeeping operations is beyond the scope of this thesis.

[1] Kofi A Annan, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003) ('*2003 Bulletin*').

[2] For example, the former Assistant Secretary-General for peacekeeping operations, Jane Holl Lute, has stated that: "[m]y operating presumption [is] that this is either an ongoing or potential problem in every single one of our missions." Quoted in Mike Williams, *Fears over Haiti child abuse* (30 November 2006) BBC News <http://news.bbc.co.uk/2/hi/americas/6159923.stm>. Last Accessed: 12 August 2014.

Instead, a number of peacekeeping missions, such as West Africa, Kosovo, and the Congo, will be examined to highlight the key issues that exist in relation to SEA. This will include the types of allegations that have been reported, the circumstances under which they occurred, and the perpetrators who have been involved.[3] Although the discussion will focus on the official investigations undertaken by the UN, it is acknowledged that the work of researchers, NGOs, activists, and the media in reporting this issue has also been invaluable.

This chapter will also examine the actions that the UN has taken in response to allegations of SEA. The discussion will focus on the main initiatives implemented by the UN and the general approach that the Organisation has taken to combat the problem. Hence, this chapter will provide the background information necessary to understand the issue of SEA. This chapter will also demonstrate that SEA is an ongoing, widespread, and systemic problem that is worthy of further research and action.

2.1 Allegations of Sexual Exploitation and Abuse on UN Peacekeeping Operations

2.1.1 Early Allegations

Rumours of SEA by UN peacekeeping personnel have long circulated amongst local communities, NGO workers, and human rights activists. For example, in 1992 and 1993, UN peacekeeping personnel on mission in Cambodia were alleged to have frequented 'Thai-style' massage parlours and brothels.[4] This increased demand for sexual services reportedly quadrupled the number of prostituted women and girls in Cambodia from 6,000 to 25,000

[3] It is acknowledged that acts of SEA are not only perpetrated by UN peacekeeping personnel. Others who are also in positions of power over the local community – such as State or rebel military forces, private military contractors, or other international personnel such as NGO workers – may also perpetrate acts of SEA. This is the broader context in which acts of SEA by UN peacekeeping personnel may take place. Whilst these other actors may be mentioned in this chapter, a thorough analysis of all possible perpetrators of SEA is beyond the scope of this thesis. As discussed in Chapter One, the focus of this thesis will be on the violations committed by UN peacekeeping personnel.

[4] Sarah Martin, 'Must Boys be Boys?: Ending Sexual Exploitation & Abuse in UN Peacekeeping Missions' (Refugees International, 2005) 4.

and involved the prostitution of children.[5] In response to complaints made by the local community to the UN mission, the Mission's Special Representative to the Secretary-General, Yasushi Akashi, purportedly replied that 'boys will be boys'.[6]

Reports of SEA have also emerged from the UN Mission in Ethiopia and Eritrea (UNMEE) which began its operations in 2000. As a result of investigations, several UN peacekeepers were dismissed. This included the expulsion of three UN peacekeepers for having sex with a 13 year old Eritrean girl and the dismissal of a soldier for video recording himself having sex with an Eritrean woman who believed that the peacekeeper was going to marry her.[7] It was also alleged that the prostitution of local women and children grew significantly with the arrival of UN personnel.[8] One young peacekeeper, who was interviewed for a newspaper, described how he was encouraged by his superior to pay for sex whilst on mission.[9] He estimated that 90% of his fellow peacekeepers had bought prostituted women at some point.[10]

2.1.2 The First Investigation: West Africa

In 2001, the UN initiated its first broad investigation into the issue of SEA after the release of a report commissioned by the UN High Commissioner for Refugees (UNHCR) and Save the Children.[11] The report was produced by two independent consultants who had been contracted to investigate the occurrence of sexual exploitation and violence in refugee

[5] Ibid.
[6] Ibid.
[7] Elise Barth, 'The United Nations Mission in Eritrea/Ethiopia: Gender(ed) Effects' in Louise Olsson, Karen Hostens, Inger Skjelsbæk and Elise Fredrikke Barth (eds), *Gender Aspects of Conflict Interventions: Intended and Unintended Consequences* (Report to Norwegian Ministry of Foreign Affairs, 2004) 9, 14.
[8] Ibid.
[9] Ibid 18.
[10] Ibid.
[11] *Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa,* UN GAOR, 57th sess, Agenda Item 122, UN Doc A/57/465 (11 October 2002) ('*Investigation into West Africa*').

camps across Guinea, Liberia, and Sierra Leone.[12] The report alleged the existence of widespread SEA by UN staff, security forces, staff of international and national NGOs, government officials, and community leaders.[13] In response to the report, the UN Office of Internal Oversight Services (OIOS) undertook its own investigation.[14] Although the OIOS Investigation Team was unable to substantiate the allegations in the consultants' report, it did uncover other cases of SEA. The cases contained in the OIOS report revealed that UN personnel were abusing their position of authority and trust to perpetrate acts of SEA.[15] For example, in one substantiated case, a UNHCR volunteer, aged 44, had sexual relations with a 15 year old female refugee from Sierra Leone and, in return, had paid for her school fees. When she became pregnant, he abandoned her and refused to acknowledge paternity. As a result of the investigation, the UN volunteer had his contract terminated.[16] In another example, a child testified how he had initially trusted a UN peacekeeper who had approached him while he was fishing with his friends.[17] The UN peacekeeper then led the child into an isolated bush area where he raped him.[18] The peacekeeper gave the child some money to keep quiet about the incident.[19] However, the child reported the incident to his mother and the police, and attended the local hospital for medical treatment.[20] Similar allegations have also been made against other UN personnel, including a UNHCR Protection

[12] Muna Ndulo, 'The United Nations Responses To The Sexual Abuse And Exploitation Of Women And Girls By Peacekeepers During Peacekeeping Missions' (2008) 27(1) *Berkley Journal of International Law* 126, 140.
[13] United Nations High Commissioner for Refugees and 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 based on Initial Findings and Recommendations from Assessment Mission 22 October - 30 November 2001* (February 2002) United Nations High Commissioner for Refugees <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.pdf?id=3c7cf89a4&tbl=PARTNERS>. Last Accessed: 12 August 2014.
[14] *Investigation into West Africa*, above n 11.
[15] Ibid 9.
[16] Ibid.
[17] Ibid 10.
[18] Ibid.
[19] Ibid.
[20] Ibid.

officer, a UNHCR driver, and a World Food Program staff member,[21] and have involved similar abuses of trust and power.

The OIOS report came out strongly against SEA and stated that '[s]exual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for.'[22] The OIOS report emphasised, however, that whilst cases of SEA have been found, the consultant's report which implied that acts of SEA were widespread was 'misleading and untrue.'[23] As such, the OIOS report claimed that the consultants' report had 'unfairly tarnished the reputation and credibility' of the UN agencies and NGOs working in West Africa.[24]

2.1.3 Prostitution and Trafficking in Kosovo

Serious allegations of SEA have also arisen from the peacekeeping operation in Bosnia and Herzegovina. In June 1999, a North Atlantic Treaty Organization (NATO)-led peacekeeping force entered Kosovo.[25] At its height, the Kosovo Force (KFOR) consisted of 50,000 troops from 39 different nations.[26] In addition, hundreds of personnel from the UN Interim Administration Mission in Kosovo (UNMIK) and staff from more than 250 international NGOs were present in Kosovo.

Reports by Amnesty International detail how allegations of prostitution use arose shortly after international forces entered Kosovo.[27] The problem was identified by the Organization

[21] Ibid.
[22] Ibid 1.
[23] Ibid 14.
[24] Ibid.
[25] Following the adoption of UN Security Council Resolution 1244. SC Res 1244, UN SCOR, 4011th mtg, UN Doc S/RES/1244 (10 June 1999).
[26] *Conflict background* (18 April 2007) NATO <http://www.nato.int/kfor/docu/about/background.html>. Last Accessed: 10 July 2012.
[27] Amnesty International, *So Does that Mean I Have Rights? Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo* (Amnesty International, 2004) 1.

for Security and Cooperation in Europe (OSCE) as quickly as three months after the arrival of international personnel and, at six months, the problem was acknowledged by UNMIK's Gender Advisor.[28] By January 2004, 200 bars, restaurants and cafes had been identified as potential venues for prostitution and human trafficking, and were placed on an 'off-limits' list for UNMIK and KFOR personnel.[29]

Estimates have varied on the percentage of prostitution 'clientele' that consisted of international personnel. Amnesty International estimated that in 1999-2000, up to 80 per cent of the clientele were international personnel.[30] This figure was believed to have dropped to 30 per cent in 2002 after international attention was brought to the issue and some actions were taken in response to the problem.[31] However, it was claimed that international clients still accounted for 80 per cent of the profits made by these establishments.[32] UNICEF provided a higher estimate, reporting that in 2002, local NGOs estimated that international personnel still constituted 50 per cent of clients.[33]

A wide range of international personnel were alleged to have used prostituted and trafficked women, including the International Police Task Force (IPTF) Deputy Commissioner,[34] UNMIK Police, and KFOR and NATO forces.[35] Furthermore, IPTF members were accused of not only patronising establishments with prostituted and trafficked women

[28] Ibid.
[29] Ibid 7.
[30] Ibid 47.
[31] Ibid 48.
[32] Ibid.
[33] Barbara Limanowska, *Trafficking in Human Beings in Southeastern Europe: Current Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova and Romania'* (UNICEF/UNOHCHR/OSCE-ODIHR, June 2002) 65. Available at <http://ceecis.org/child_protection/PDF/CEEtraff_02.pdf>. Last Accessed: 12 August 2014.
[34] Jennifer Murray, 'Who will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina' (2003) 34 *Columbia Human Rights Law Review* 475, 505.
[35] Amnesty International, above n 27, 48-53.

but also being involved in the trafficking of women themselves.[36] In addition, KFOR forces and international civilian personnel were alleged to have travelled to Macedonia for 'rest and relaxation', where they were able to purchase prostituted women more freely as no 'off-limits' list had been issued for Macedonia.[37]

Many reports have been published that detail the suffering of the women and girls who were trafficked or prostituted for the use of international personnel. For example, Amnesty International has compiled an extensive record of firsthand accounts of the abuses that were experienced. One young woman reported that she was subjected to 2,700 accounts of forced sex in one year, including group sex and sex at gun point.[38] Other women spoke of being bought and sold 'like a rag', being given food 'like we were animals' such as food that was left over on the plates of 'customers', and suffering continuous sleep deprivation as the women were forced to cook and clean in between sexually servicing 'clients'.[39] Similar first hand reports have been compiled by Human Rights Watch.[40] Women have reported being beaten, psychologically traumatised, starved, and prevented from leaving.[41] One staff member working for a shelter described to Human Rights Watch that women were arriving 'with cigarette burns, syphilis, (gynaecological) infections, head injuries, and fractures.'[42] These first-hand accounts are only some of the many stories that have been recorded by NGOs working in Bosnia and Herzegovina.

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[36] See, eg, Murray, above n 34; Ekrem Krasniqi, *UN Kosovo police arrested for sex trafficking* (1 September 2005) International Relations and Security Network <http://isn.ethz.ch/Digital-Library/Articles/Detail/?lng=en&id=107214>. Last Accessed: 12 August 2014.
[37] Amnesty International, above n 27, 50.
[38] Ibid 17.
[39] Ibid.
[40] Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution* (Human Rights Watch, 2002). See also Sarah E Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Center for Strategic and International Studies, 2005).
[41] Human Rights Watch, above n 40, 17-18.
[42] Ibid.

This growth in the prostitution industry in Kosovo has come from the systemic, sustained, and conscious practice of international personnel frequenting venues to gain sexual access women and children. In such cases, international personnel have taken advantage of their comparative affluence and social power to support an industry based on the sexual exploitation of women and children. In Kosovo, as elsewhere, this industry has targeted women and children who are vulnerable to being recruited or coerced into prostitution due to economic deprivation or other oppressive conditions.[43] In such circumstances, the symbolism of arriving within the country under the 'prestige' of the UN makes such violations not only an abuse of the individual women and children, but also an abuse of the power and trust that the international community has placed in UN personnel.

2.1.4 Sex with Children in the Congo

Allegations of SEA have also been made against the UN Mission in the Democratic Republic of Congo (MONUC).[44] Established in 1999, MONUC currently totals 21,245 military personnel, military observers and police, 990 international civilian personnel, 2,979 local civilian staff, and 556 UN volunteers.[45] In May 2004, 72 complaints against UN personnel were investigated by the OIOS, of which only 10 were able to be substantiated.[46] Many difficulties were encountered during the investigation process including not being able to locate victims or witnesses, alleged perpetrators being rotated out of the mission area, and victims being unable to identify perpetrators or recall events. For example, many girls

[43] For example, the International Organization for Migration (IOM) has published a profile on the women and girls who have been trafficked into Kosovo which reveals that: 70% defined themselves as poor or very poor; the majority (57%) had only received basic primary education; those that were paid earned less than US$30 a month; and 44% of women had been subject to violence by their families or partners before being trafficked. See Amnesty International, above n 27, 11.

[44] As of 1 July 2010, MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in accordance with UN Security Council Resolution 1925. See SC Res 1925, UN SCOR, 6324th mtg, UN Doc S/RES/1925 (28 May 2010).

[45] As of 28 February 2014. See *MONUSCO Facts and Figures* (28 February 2014) United Nations <http://www.un.org/en/peacekeeping/missions/monusco/facts.shtml>. Last Accessed: 12 August 2014.

[46] *Investigation by the Office of Internal Oversight Services into Allegations of Sexual Exploitation and Abuse in the United Nations Organization Mission in the Democratic Republic of the Congo,* UN GAOR, 59th sess, Agenda Items 114, 118 and 127, UN Doc A/59/661 (5 January 2005) 1.

stated that they did not want to look at the peacekeeper's face during the abuse and were, therefore, unable to identify them.[47] Others were too traumatised to recount events, especially girls who had been subject to rape or sexual violence previously.[48] Despite the difficulties in substantiating these allegations, numerous interviews with Congolese women and girls did indicate that acts of SEA were widespread and of regular occurrence.[49]

All of the cases that were confirmed by the OIOS involved girls under the age of 18 who had engaged in sexual acts with peacekeeping personnel in return for small amounts of food or money. For example, one incident involved a MONUC soldier who engaged in sexual acts several times with a 14 year old girl and compensated her each time with $1 or $2 or two eggs. The solider was introduced to the girl by a 15 year old boy in return for some bread. Other forms of payment by peacekeeping personnel to the children included milk, chocolate or between $1 to $5.[50] The investigation also found that most of the girls were between 12 and 16 years of age, were poor village children, and were illiterate.[51] The most vulnerable girls were the ones who had been separated from their families due to the conflict and were driven out of hunger to make contact with MONUC forces.[52] The military personnel implicated in the allegations were not ranked as officers but were enlisted or non-commissioned personnel mainly serving as guards.[53]

Similar to the situations in West Africa and Kosovo, the acts of SEA reported in the OIOS report involved peacekeeping personnel taking advantage of their position of power, such as comparative economic affluence, social status and age, to gain sexual gratification. The

[47] Ibid 4.
[48] Ibid.
[49] Ibid 1 and 4.
[50] Ibid 5-6.
[51] Ibid 8.
[52] Ibid 9.
[53] Amnesty International, above n 27, 8.

'acceptance' by the children of the smallest amounts of food, such as two eggs, in return for performing sexual acts indicates that peacekeeping personnel were exploiting situations of significant economic deprivation and struggle for basic survival.

2.1.5 Other Allegations

Outside of official UN investigations, there have also been numerous media reports, NGO reports, and anecdotal evidence that detail allegations of SEA by peacekeeping personnel.[54] For example, an investigation by the BBC into the peacekeeping mission in Haiti recorded several interviews with survivors of SEA.[55] Screened in 2006, the documentary shows an interviewee describe how she watched as a UN peacekeeper lifted up a young girl and place her hands on his erect penis.[56] In Mozambique, local residents reportedly sent letters of protest to local newspapers and the UN head of mission about the sexual abuse and increased prostitution that had been generated since the arrival of peacekeeping personnel.[57] An article published in a local bulletin on the deployment of the 'blue hats' stated that, '[n]ot unexpectedly, there are already rumours of sexual abuse by foreign soldiers, and of drunkenness and bad driving.'[58] Notably, the wording of this article indicates that acts of SEA against local women and children were 'not unexpected' with the arrival of UN peacekeeping personnel.

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[54] See Michael J Jordan, *Sex Charges Haunt UN Forces* (26 November 2004) The Christian Science Monitor <http://www.csmonitor.com/2004/1126/p06s02-wogi.html>. Last Accessed: 12 August 2014.; Mike Williams, *Fears over Haiti child 'abuse'* (30 November 2006) BBC News <http://news.bbc.co.uk/2/hi/americas/6159923.stm>. Last Accessed: 12 August 2014.

[55] Williams, above n 54.

[56] BBC News, 'UN Troops Accused of Sex Crimes', 30 November 2006 (Michael Williams) <http://news.bbc.co.uk/player/nol/newsid_6190000/newsid_6197400/6197416.stm?bw=nb&mp=wm&news=1&bbcws=1>. Last Accessed: 12 August 2014.

[57] AB Fetherston, 'UN Peacekeepers and Cultures of Violence' (Spring 1995) 19(1) *Cultural Survival* <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/bosnia-and-herzegovina/un-peacekeepers-and-cultures-violenc#sthash.3EJ7h93G.dpuf>. Last Accessed: 12 August 2014.

[58] Rachel Waterhouse and Gil Lauriciano, *Mozambique Peace Process Bulletin* (June 1993) The Open University <http://www.open.ac.uk/technology/mozambique/pics/d75954.pdf> 4. Last Accessed: 15 September 2012.

These are just some of the many grassroots stories that are available on the SEA committed by peacekeeping personnel. Combined with the official investigations undertaken by the UN, these allegations indicate that there has been, and continues to be, a serious problem of sexual misconduct by UN peacekeeping personnel.

2.2 Responses by the United Nations to Allegations of SEA

2.2.1 The 2003 Bulletin

On 22 May 2003, following the OIOS's report on West Africa, the UN General Assembly adopted Resolution 57/306 which requested the Secretary-General to, *inter alia*, proceed expeditiously to issue a bulletin on the issue of SEA and to report annually to the General Assembly on the number of complaints of SEA that have been received by the Organisation.

In October 2003, the Secretary-General issued the *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*. [59] As discussed in Chapter One, the 2003 Bulletin defined the range of conduct that would constitute SEA and the prohibitions against SEA that were now applicable to all UN staff. In 2007, the definition of SEA was also incorporated into the Model Memorandum of Understanding (MoU), thereby making these prohibitions binding upon all UN military personnel. The promulgation of these prohibitions has been considered as one of the 'most important' actions taken by the UN against SEA.[60]

The 2003 Bulletin also inspired the UN's 'zero-tolerance' approach to SEA. This was enunciated in February 2005 by the Secretary-General in his letter to the President of the Security Council in which he stated that, '[w]e cannot tolerate even one instance of a United Nations peacekeeper victimizing the most vulnerable among us… such behaviour violates

[59] 2003 Bulletin, above n 1.
[60] Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge, 2011) 207.

the fundamental "duty of care" that United Nations peacekeepers owe to the very peoples they are sent to protect and serve… The basic policy is clear: zero tolerance of sexual exploitation and abuse of any kind.' This zero-tolerance approach has since been reiterated throughout the UN's work to combat SEA.

2.2.2 The Zeid Report

Despite these prohibitions, allegations of SEA continued to be received by the Organisation. Faced with these continuing allegations, the Secretary-General finally declared that 'the measures currently in place to address sexual exploitation and abuse in peacekeeping operations [are] manifestly inadequate and… a fundamental change in approach [is] needed.'[61] Accordingly, the Secretary-General invited Prince Zeid Ra'ad Zeid Al-Hussein, the Permanent Representative of Jordan, to investigate the occurrence of SEA and to make recommendations on how to address the problem.[62]

In March 2005, the UN released its first comprehensive analysis of the issue of SEA, titled *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations* (Zeid report).[63] The Zeid report addressed the five different categories of UN personnel deployed on peacekeeping operations and the differing rules and regulations that applied to each category.[64] These categories were: UN staff, UN volunteers, individual contractors and consultants, civilian police and military observers, and military members of national contingents.[65] The report made several bold recommendations including: improving investigation processes; increasing organisational,

[61] Prince Zeid Ra'ad Zeid Al-Hussein, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, UN GAOR, 57th sess, Agenda Item 77, UN Doc A/59/710 (24 March 2005) 1 ('*Zeid Report*').
[62] Ibid.
[63] Ibid 2.
[64] Ibid 10-11.
[65] Ibid.

managerial, and command accountability; and ensuring individual disciplinary, financial, and criminal accountability.[66] The focus of much of the Zeid report was on the individual responsibility of the alleged perpetrator and improving individual investigation processes to ensure disciplinary, financial, or criminal accountability.

The Zeid report, however, did acknowledge the importance of organisational responsibility and stated that '[u]ltimately, the United Nations is accountable for its peacekeeping operations.'[67] The Zeid report also made a number of recommendations for administrative changes that the Organisation should adopt, such as ensuring adequate training of its personnel, outreach to the local community, data collection, the appointment of specialist staff, and an increase in the percentage of female personnel.[68] Nonetheless, the question of the legal accountability of the Organisation for these violations was left unaddressed.

2.2.3 The Group of Legal Experts

As recommended by the Zeid Report, the Secretary-General established a Group of Legal Experts (GLE) to study the criminal accountability of UN officials and experts on mission whilst on peacekeeping operations.[69] The GLE report, released in August 2006, considered the issues of defining criminal conduct, the establishment of jurisdiction, the investigation process, and the development of a new international convention. In regard to criminal jurisdiction, the GLE recommended that priority should be given to the jurisdiction of the host State, and that other States should exercise their jurisdiction if the host State did not have the capacity to do so.[70]

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[66] Ibid.
[67] Ibid 17.
[68] Ibid 17-18.
[69] Group of Legal Experts, *Ensuring the Accountability of United Nations Staff and Experts on Mission with respect to Criminal Acts committed in Peacekeeping Operations*, UN GAOR, 66th sess, Agenda Item 32, UN Doc A/60/980 (16 August 2006) 27 ('*GLE Report*').
[70] Ibid 10-17.

The most significant recommendation made by the GLE was the adoption of a new international convention on the criminal accountability of UN officials and experts on mission. The GLE argued that a new convention was important to ensure that it was 'not left to the discretion of each State' to establish jurisdiction over the crimes committed during peacekeeping operations.[71] It also argued that a new convention was needed to secure the 'high political signature' necessary to convey the importance of dealing with these crimes.[72]

States responded to this proposal with a range of views. Whilst some States recognised that a new treaty would 'help close the legal gap in jurisdiction,'[73] others argued that it was still too premature to discuss such a treaty.[74] Although the UN General Assembly has, since 2007, issued annual resolutions calling upon States to implement the recommendations of the GLE report,[75] little progress has been made towards a new convention. In addition, whilst the work of the GLE has been invaluable for addressing some of the legal issues surrounding the individual criminal accountability of the alleged perpetrator, the GLE was not mandated to address the legal accountability of the UN for these violations.

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[71] Ibid 18.
[72] Ibid.
[73] *Report of the Ad Hoc Committee on Criminal Accountability of United Nations Officials and Experts on Mission: First Session,* UN GAOR, 66th sess, Supp No 54, UN Doc A/62/54 (9-13 April 2007) 3 [17].
[74] Ibid.
[75] *Criminal Accountability of United Nations Officials and Experts on Mission*, GA Res 67/88, UN GAOR, 6th Comm, 67th sess, Agenda Item 76, UN Doc A/RES/67/88 (14 January 2013, adopted 14 December 2012); *Criminal Accountability of United Nations Officials and Experts on Mission*, GA Res 66/93, UN GAOR, 6th Comm, 66th sess, Agenda Item 78, UN Doc A/RES/66/93 (13 January 2012, adopted 9 December 2011); *Criminal Accountability of United Nations Officials and Experts on Mission*, GA Res 65/20, UN GAOR, 6th Comm, 65th sess, Agenda Item 76, UN Doc A/RES/65/20 (10 January 2011, adopted 6 December 2010); *Criminal Accountability of United Nations Officials and Experts on Mission*, GA Res 64/110, UN GAOR, 6th Comm, 64th sess, Agenda Item 78, UN Doc A/RES/64/110 (15 January 2010, adopted 16 December 2009); *Criminal Accountability of United Nations Officials and Experts on Mission*, GA Res 63/119, UN GAOR, 6th Comm, 63rd sess, Agenda Item 73, UN Doc A/RES/63/119 (15 January 2009, adopted 11 December 2008); *Criminal Accountability of United Nations Officials and Experts on Mission*, GA Res 62/63, UN GAOR, 6th Comm, 62nd sess, Agenda Item 80, UN Doc A/RES/62/63 (8 January 2008, adopted 6 December 2007); *Criminal Accountability of United Nations Officials and Experts on Mission*, GA Res 61/29, UN GAOR, 6th Comm, 61st sess, Agenda Item 33, UN Doc A/RES/61/29 (18 December 2006, adopted 4 December 2006).

2.2.4 UN Security Council Resolutions

Since 2008, the UN Security Council (UNSC) has also issued a series of resolutions on the problem of SEA. The first resolution, UNSC Resolution 1820, called for the continuation and strengthening of efforts to implement the zero tolerance policy and urged Member States to take appropriate preventative action, including pre-deployment awareness training and ensuring full accountability for all cases involving their nationals.[76] These calls were reiterated in UNSC Resolution 1888.[77] In UNSC Resolution 1894, adopted in 2009, the Security Council broadened its request to include training on the transmission of HIV/AIDs and for the Secretary-General to ensure mission-wide planning, pre-deployment training, and senior leadership training on the protection of civilians.[78] In 2010, the Security Council adopted Resolution 1960 which requested the development of situation-specific procedures to address SEA at a field level and technical support for sending States to support their predeployment and induction training.[79] Finally, in 2013, the Security Council adopted Resolution 2106 which reiterated the call to strengthen the zero-tolerance approach and for States to ensure full accountability for acts of SEA, including the prosecution of their nationals.[80]

Due to the authority of the Security Council, these resolutions have added weight, both symbolically and legally, to the importance of dealing with the issue of SEA on peacekeeping operations. However, these resolutions have largely focused on the actions that Member States can take to address the problem of SEA. These resolutions have yet to consider the issues involved in the legal accountability of the UN for the occurrence of SEA.

[76] SC Res 1820, UN SCOR, 5916th mtg, UN Doc S/RES/1820 (19 June 2008) [7].
[77] SC Res 1888, UN SCOR, 6195th mtg, UN Doc S/RES/1888 (30 September 2009) [21].
[78] SC Res 1894, UN SCOR, 6216th mtg, UN Doc S/RES/1894 (11 November 2009) [23].
[79] SC Res 1960, UN SCOR, 6453rd mtg, UN Doc S/RES/1960 (16 December 2010) [16].
[80] SC Res 2106, UN SCOR, 6984th mtg, UN Doc S/RES/2106 (24 June 2013) [15].

2.2.5 The PSEA Task Force and Conduct and Discipline Unit/Teams

In addition to these 'high-level' actions, the UN has implemented a number of changes to its organisational structure and has taken actions 'on the ground' to respond to the ongoing problem of SEA. One significant change has been the establishment of the Inter-Agency Standing Committee (IASC) Task Force on Protection from Sexual Exploitation and Abuse (PSEA Task Force). Created in 2002, the PSEA Task Force is comprised of both UN and non-UN entities and works primarily to support the establishment of policies on SEA and to develop tools and training materials to prevent SEA. The work of the Task Force has included: the production of a UN strategy on assistance to victims, which was adopted by the General Assembly in 2007;[81] the development of guidance materials on implementing the 2003 Bulletin and establishing community based complaints mechanisms; and providing strategic and technical support to selected field operations.[82]

Another important structural change has been the establishment of the Conduct and Discipline Teams (CDT) in 2005 and the Conduct and Discipline Unit (CDU) in 2007. The CDU is located at the UN Headquarters and is responsible for providing overall direction and guidance for conduct and discipline issues on field missions.[83] The work of the CDU includes the development of guidance tools for implementing UN standards of conduct, standardising training modules, and monitoring complaints of misconduct.[84] In addition, CDTs have been placed in field missions and act as principal advisers to the head of the mission on issues of misconduct, including acts of SEA.[85] CDTs have been deployed on most

[81] *SEA Victim Assistance Guide: Establishing Country-Based Mechanisms for Assisting Victims of Sexual Exploitation and Abuse by UN/NGO/IGO Staff and Related Personnel* (United Nations Office for the Coordination of Humanitarian Affairs, April 2009) <www.un.org/en/pseataskforce/docs/victim_assistance_guide.doc>.
[82] *Task Force* (2013) Protection from Sexual Exploitation and Abuse by our own staff <http://www.pseataskforce.org/en/taskforce>. Last Accessed: 12 August 2014.
[83] *Welcome to the Conduct and Discipline Unit* (2010) United Conduct and Discipline Unit <http://cdu.unlb.org/>. Last Accessed: 12 August 2014.
[84] Ibid.
[85] Ibid.

UN peacekeeping operations and play an important role as the first point of contact to receive allegations of SEA.[86]

Both the PSEA Task Force and CDT/CDU work to ensure that UN peacekeeping personnel respect the UN's codes of conduct. These codes of conduct include: the *Ten Rules: Code of Conduct*;[87] *We are United Nations Peacekeepers*;[88] the 2003 Bulletin; and mission-specific codes of conduct.[89] All of these documents adopt a 'zero-tolerance' approach towards SEA. Hence, these actions and structural changes by the Organisation reflect positively on the UN's recognition of the important role that it has in preventing and eliminating SEA.

2.2.6 Reports by the UN Secretary-General

Despite these initiatives, annual reports released by the Secretary-General reveal that a significant number of complaints of SEA continue to be received by the Organisation every year. The latest report reveals that in 2012, 88 complaints were received which is, on average, one allegation every four days.[90] These complaints were made against 45 UN entities, including the Office of the Coordination of Humanitarian Affairs (OCHA), the UN Development Program (UNDP), and the UN High Commissioner for Refugees (UNHCR). These complaints were also made against several categories of UN personnel including civilian, military, police, and corrections staff.[91]

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[86] Ibid.

[87] *Ten Rules: Code of Personal Conduct for Blue Helmets,* United Nations Peacekeeping <http://www.un.org/en/peacekeeping/documents/ten_in.pdf>. Last Accessed: 12 August 2014.

[88] *We are United Nations Peacekeepers,* United Nations Peacekeeping <http://www.un.org/en/peacekeeping/documents/un_in.pdf>. Last Accessed: 12 August 2014.

[89] See, eg, *Code of Conduct on Sexual Exploitation and Abuse*, United Nations Mission in the Democratic Republic of Congo (MONUC) <http://www.pseataskforce.org/uploads/tools/codeofconductonsea_unmissionindrc_english.pdf>. Last Accessed: 12 August 2014.

[90] *2003 Bulletin*, above n 1, 17-18.

[91] *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 67th sess, Agenda Item 135, UN Doc A/67/766 (28 February 2013) 17-18 ('*Secretary-General's Report on SEA 2013*').

Previous reports by the Secretary-General show that the UN received 102 complaints in 2011, 116 complaints in 2010, 154 complaints in 2009, 111 complaints in 2008, and 159 complaints in 2007.[92] These figures are significantly lower than in preceding years, in which 371 allegations were received in 2006 and 340 allegations were reported in 2005.[93] This decrease in the number of allegations of SEA may be due to the actions undertaken by the UN to address the problem. However, the 'official' number of allegations should not be equated with the actual rate of occurrence of SEA. As discussed, survivors face many obstacles in being able to officially report incidences of SEA to the UN and, consequently, the actual rate of SEA is likely to be significantly higher.

In addition, the latest report has divided the complaints into received allegations against UN personnel deployed on peacekeeping operations and UN personnel not deployed on peacekeeping operations. Sixty allegations were made against UN personnel deployed on peacekeeping operations, of which 19 allegations were against military personnel, 31 allegations involved civilian personnel, and 9 allegations implicated UN police.[94] Complaints were also received from 10 field missions including, in order of prevalence, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), United Nations Mission in South Sudan (UNMISS), United Nations Mission in Liberia (UNMIL), United Nations Stabilization Mission in Haiti (MINUSTAH), United Nations

[92] *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 66th sess, Agenda Item 139, UN Doc A/66/699 (17 February 2012); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 65th sess, Agenda Item 134, UN Doc A/65/742 (18 February 2011); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 64th sess, Agenda Item 137 and 146, UN Doc A/64/669 (18 February 2010); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 63rd sess, Agenda Item 123 and 132, UN Doc A/63/720 (17 February 2009); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 62nd sess, Agenda Item 133 and 140, UN Doc A/62/890 (25 June 2008).

[93] *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 61st sess, Agenda Item 123 and 132, UN Doc A/61/957 (15 June 2007); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 60th sess, Agenda Item 129 and 136, UN Doc A/60/861 (24 May 2006).

[94] *Secretary-General's Report on SEA 2013*, above n 91, 3 and 4.

Operation in Côte d'Ivoire (UNOCI), United Nations Integrated Mission in Timor-Leste (UNMIT), United Nations Mission for the Referendum in Western Sahara (MINURSO), United Nations Interim Security Force for Abyei (UNISFA), United Nations Assistance Mission in Afghanistan (UNAMA), United Nations Peacebuilding Support Office in Guinea-Bissau (UNIOGBIS), and United Nations Integrated Office in Burundi (BINUB).[95] A notable 30 per cent of allegations involved the abuse of minors and 15 per cent of cases involved non-consensual sex with persons over 18 years.[96] At the time of publication, 18 per cent of cases had been investigated and 58 per cent were still pending investigation.[97]

In regard to allegations outside of peacekeeping operations, the report reveals one allegation against a staff member of the International Criminal Tribunal for Rwanda (ICTR); 12 allegations against UNHCR staff and volunteers; 13 allegations against the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); and one allegation against the World Food Programme (WFP).[98] Of these allegations, 43 per cent had been investigated by the time of the report's publication.[99] Hence, the annual reports issued by the Secretary-General clearly demonstrate that SEA continues to be an ongoing, systemic, and widespread problem across many of the UN's operations.

2.3 Conclusion

The overview of SEA presented in this chapter has shown that some UN peacekeeping personnel have abused their position of power, authority, and trust to gain sexual gratification. Whilst only a small number of deployed personnel may be engaging in this shameful conduct, each act of SEA can cause significant physical and psychological suffering

[95] Ibid 4.
[96] Ibid.
[97] Ibid.
[98] Ibid 3.
[99] Ibid.

to the individual, their family, and their community. Each act of SEA reinforces the violence, the trauma, and the desperation of surviving in a conflict-ridden or post-conflict society. And each act of SEA can further fuel any sense of mistrust, disdain, or even resentment that may exist towards the peacekeeping operation.

Whilst the summary provided in this chapter has only examined a few peacekeeping operations, it has nonetheless demonstrated that the occurrence of SEA by peacekeeping personnel is a significant, widespread, and ongoing problem. Although the UN has taken many actions to address the issue of SEA, the problem nonetheless continues. Hence, an effective solution to SEA by UN peacekeeping personnel is still needed and the issue warrants further investigation, debate, and action.

CHAPTER 3

The International Law on Sexual Exploitation and Abuse

From the protection of women's 'honour' in early international humanitarian law to the articulation of an increasingly comprehensive regime to combat human trafficking, international law has grown in both scope and sophistication in addressing the issue of sexual exploitation and abuse (SEA). In this chapter, different areas of international law will be examined to determine the extent to which acts of SEA, as defined in the 2003 Bulletin,[1] are prohibited. Four areas of international law will be examined: international humanitarian law, international criminal law, the international law on human trafficking, and international human rights law. It will be demonstrated that each area of international law covers different aspects of SEA. International criminal law, for example, will be useful for understanding the concept of 'sexual abuse' in the 2003 Bulletin and for providing extensive prohibitions against sexual violence crimes. The international law on human trafficking, on the other hand, will be useful for understanding the concept of 'sexual exploitation' and, in particular, the 'abuse of a position of vulnerability'. Both legal regimes, however, require the act of SEA to also fulfil the elements of either a crime against humanity/war crime/genocide or human trafficking, respectively. This limits their application to SEA on peacekeeping operations as this would not be the case for most of the acts of SEA perpetrated by peacekeeping personnel.

In contrast, the broad protections enshrined in international human rights law may cover both the 'sexual abuse' and 'sexual exploitation' components of the 2003 Bulletin. The wider scope and application of international human rights law also means that these prohibitions would apply to a wider range of circumstances than those covered by international criminal

[1] Kofi A Annan, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003) ('*2003 Bulletin*').

or human trafficking law. Therefore, for the purposes of this thesis, international human rights law provides the most useful legal framework for addressing the problem of SEA. In this chapter, it will be argued that framing acts of SEA on peacekeeping operations as a violation of human rights may be the best way to establish that acts of SEA are also a violation of international law. The extent to which acts of SEA are a violation of international law will now be examined.

3.1 International Humanitarian Law

International humanitarian law (IHL), or the law of war, is the law that applies to the conduct of armed conflict. IHL seeks to regulate and limit the ways in which armed conflict is conducted for humanitarian purposes.[2] The treaties that comprise IHL include the Hague Conventions,[3] the Geneva Conventions and its Additional Protocols,[4] and various agreements that regulate specific aspects of warfare.[5]

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[2] International Committee of the Red Cross, *What is International Humanitarian Law?* (July 2004 <http://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf>. Last Accessed: 12 August 2014.

[3] Eg, *Hague Convention II with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land*, open for signature 29 July 1899, 187 CTS 429 (entered into force 4 September 1900); *Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land*, open for signature 18 October 1907, 187 CTS 227 (entered into force 26 January 1910).

[4] *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, open for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950);
Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, open for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); *Geneva Convention (III) Relative to the Treatment of Prisoners of War,* open for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War,* open for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950)('*Geneva Convention (IV)'*); *Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts,* open for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978)('*Additional Protocol I*'); *Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts,* open for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978))('*Additional Protocol II*').

[5] See, eg, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, open for signature 14 May 1954, 249 UNTS 240 (entered into force 7 August 1956); *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, open for signature 4 October 1972, 1015 UNTS 163 (entered into force 26 March 1975); *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, open for signature 13 January 1993, 1974 UNTS 45 (entered into force 29 April 1997); *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-*

The Geneva Conventions and Additional Protocols provide basic prohibitions against acts of SEA.[6] The 1949 Geneva Convention IV, which codifies the protections for civilian persons during armed conflict, provides protection for women from 'any attack[s] on their honour' such as through rape, enforced prostitution, and any form of indecent assault.[7] The 1977 Additional Protocols I and II, which provide protections for victims of international and non-international armed conflict, respectively, considers acts of SEA to be 'outrages upon personal dignity' and protects women from rape, enforced prostitution, any form of indecent assault, and humiliating or degrading treatment.[8] However, neither the Geneva Convention nor the Additional Protocols provide definitions for rape, enforced prostitution, or indecent assault. As evident in the language of these earlier treaties, the prevention of SEA is closely tied to the preservation of women's 'honour' and 'dignity' rather than the protection of their human rights, sexual rights, or sexual autonomy.[9]

Personnel Mines and on their Destruction, open for signature 18 September 1997, 2056 UNTS 241 (entered into force 1 March 1999).

[6] The terminology of SEA is not used in the Geneva Conventions or Additional Protocols but, for consistency, it will be used in this thesis in the discussion of these treaties.

The Trial Chamber judgment of *Prosecutor v Furundžija* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-95-17/1-T, 16 July 1998), also provided a good summary of the laws prohibiting sexual assault in armed conflict prior to the Geneva Conventions. In paragraph 168, the Chamber provides that: 'The prohibition of rape and serious sexual assault in armed conflict has also evolved in customary international law. It has gradually crystallised out of the express prohibition of rape in article 44 of the Lieber Code and the general provisions contained in article 46 of the regulations annexed to Hague Convention IV, read in conjunction with the 'Martens clause' laid down in the preamble to that Convention. While rape and sexual assaults were not specifically prosecuted by the Nuremberg Tribunal, rape was expressly classified as a crime against humanity under article II(1)(c) of Control Council Law No. 10. The Tokyo International Military Tribunal convicted Generals Toyoda and Matsui of command responsibility for violations of the laws or customs of war committed by their soldiers in Nanking, which included widespread rapes and sexual assaults. The former Foreign Minister of Japan, Hirota, was also convicted for these atrocities. This decision and that of the United States Military Commission in *Yamashita*, along with the ripening of the fundamental prohibition of "outrages upon personal dignity" laid down in common article 3 into customary international law, has contributed to the evolution of universally accepted norms of international law prohibiting rape as well as serious sexual assault.'

[7] *Geneva Convention VI* art 27.

[8] *Additional Protocol I* art 75(2)(b) and art 76; *Additional Protocol II* art 4(2)(e).

[9] There is much feminist analysis on the relationship between laws on sexual violence and the enforcement of women's sexual 'morality'. See, eg, Sue Lees, *Ruling Passions: Sexual Violence, Reputation and the Law* (Open University Press, 1997); Rosemarie Tong, *Women, Sex, and the Law* (Rowman & Allanheld, 1984); and Camille E LeGrand, 'Rape and Rape Laws: Sexism in Society and Law' (1973) 61 *California Law Review* 919. For a discussion of the historical development of rape and sexual assault law, see Patricia L N Donat and John D'Emilio, 'A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change' (1992) 48(1) *Journal of Social Issues* 9.

Analysis and Conclusion

Whilst IHL provides some prohibitions against SEA, the application of IHL is limited to situations of armed conflict. The determination of the status of a conflict for the purposes of IHL, however, can be difficult. The definition of armed conflict and the determination of conflict status are beyond the scope of thesis.[10] Nonetheless, the determination of conflict status is important as it has implications for the application of IHL to UN peacekeeping personnel. According to the Secretary-General's bulletin, *Observance by United Nations Forces of International Humanitarian Law*, IHL is '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.'[11] Therefore, the limitation of IHL to armed conflict also limits the prohibitions against SEA to situations of armed conflict.

Allegations of SEA by peacekeeping personnel, however, have been received across a range of circumstances, including in non-armed conflict situations and in armed conflict when peacekeeping forces were not actively engaged as combatants.[12] For example, as discussed in Chapter Two, allegations of SEA have also been received by the Organisation against its civilian operations, such as its administration of territory and management of refugee settlement areas. Hence, whilst IHL may be applicable to occurrences of SEA when UN forces are engaged in armed conflict, it will not be applicable to the wide range of circumstances under which acts of SEA have been reported. In addition, whilst IHL may provide some preliminary prohibitions against SEA, many of these prohibitions have now developed into much more extensive prohibitions under international criminal law.

[10] For an analysis of the determination of conflict status see, eg, Gary D Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge University Press, 2010) 149-185.
[11] Kofi A Annan, *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, UN Doc ST/SGB/1999/13 (6 August 1999) art 1.1.
[12] See Chapter Two.

3.2 International Criminal Law

Over the past 15 years, the prohibition of sexual crimes has grown significantly in international criminal law (ICL). Developed from the earlier prohibitions in IHL, this progress has been spurred by the establishment of various ad hoc criminal tribunals and the International Criminal Court (ICC). These developments have provided the opportunity to expand the international law on sexual violence and to define a number of 'new' sexual violence crimes.

The jurisprudence of international criminal tribunals, such as the International Criminal Tribunal for Rwanda (ICTR), International Criminal Tribunal for the Former Yugoslavia (ICTY) and the ICC, provide a useful starting point for interpreting the broad and vague definition of 'sexual abuse' in the 2003 Bulletin. As discussed in Chapter One, the 2003 Bulletin defines sexual abuse as 'the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.'[13] The jurisprudence of the international criminal tribunals can assist in understanding what may constitute a 'physical intrusion' of a sexual nature and what circumstances may amount to 'force or unequal or coercive conditions.'

In considering the application of ICL to UN peacekeeping operations, however, two major limitations become evident. First, the focus of ICL has been on the crime of rape,[14] which constitutes only one form of sexual violence, and prohibits 'forced' prostitution, which constitutes only one type of sexual exploitation. As the focus of ICL is on 'the most serious crimes of concern to the international community,'[15] it does not cover the range of acts of

[13] *2003 Bulletin*, above n , 1.
[14] See, eg, Anne-Marie LM de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR* (Intersentia, 2005).
[15] *Rome Statute of the International Criminal Court*, open for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) ('*Rome Statute*') art 5(1).

SEA that fall within the 2003 Bulletin definition. Consequently, ICL does not adequately address a large proportion of the SEA that is perpetrated by UN personnel.

Second, for an act of SEA to constitute a crime under ICL, a high threshold must be met. In addition to fulfilling the elements of the sexual violence crime, the act must also fulfil the elements of a crime against humanity, a war crime, or genocide. For example, to constitute a crime against humanity, the sexual crime needs to fulfil the *actus reas* of being 'committed as part of a widespread or systematic attack directed against a civilian population' and the *mens rea* of the perpetrator having knowledge that the conduct was, or was intended to be, a part of that attack.[16] To constitute a war crime that violates the laws and customs of war, the sexual crime must be conducted 'in the context of and... associated with an international armed conflict'[17] and fulfil the mental element of the perpetrator being 'aware of factual circumstances that established the existence of an armed conflict.'[18] Alternatively, to constitute a war crime that violates Common Article 3, the act needs to have taken place 'in the context of and... associated with an armed conflict not of an international character' and, similarly, the perpetrator needs to be 'aware of factual circumstances that established the existence of an armed conflict.'[19] In particular, the ICC will have jurisdiction over such crimes when they are also 'committed as part of a plan or policy or as part of a large-scale commission of' war crimes.[20] Lastly, to constitute genocide, the sexual crime needs to fulfil the mental element of being 'committed with intent to destroy, in whole or part, a national, ethnical, racial or religious group.'[21]

[16] International Criminal Court, *Elements of Crimes*, UN Doc No ICC-ASP/1/3 (part II-B) (adopted 9 September 2002) art 7(1)(g)-3 ('*ICC EoC*').
[17] Ibid art 8(2)(b)(xxii)-3.
[18] Ibid art 8(2)(b) (xxii)-3.
[19] Ibid art 8 (2)(e)(vi)-3, emphasis added.
[20] *Rome Statute*, art 8(1).
[21] *ICC EoC*, art 6.

Most incidences of SEA committed by UN peacekeeping personnel would not fulfil the additional elements of a crime against humanity, a war crime, or genocide. As discussed in Chapter Two, most incidences of SEA by peacekeeping personnel are opportunistic acts committed by individuals who are taking advantage of the vulnerability of a victim to obtain sexual gratification.[22] Hence, these acts are not associated with the broader armed conflict nor involve greater motives such as the intent to destroy a particular social group or to be a part of an attack against a civilian population. Therefore, this limits the extent to which the prohibitions against SEA under ICL can be used to argue that acts of SEA by UN peacekeeping personnel are a violation of international law. Nonetheless, the commendable developments against sexual violence crimes within ICL are still useful as it can provide guidance on how to interpret 'sexual abuse' within the 2003 Bulletin and, in particular, the elements that constitute rape under international law.

3.2.1 International Criminal Tribunal for Rwanda

The establishment of the ICTR in 1998 provided an opportunity to revisit the long-standing prohibitions against SEA in international humanitarian law. The statute of the ICTR enumerates the crimes that are to be prosecuted in relation to the Rwandan conflict and which were committed between 1 January and 31 December 1994.[23] Within the subject-matter jurisdiction of the ICTR fell genocide, crimes against humanity, and violations of Common Article 3 of the Geneva Conventions and Additional Protocol II. The ICTR statute codified the crime of 'rape' as a crime against humanity[24] and reiterated the status of rape,

[22] See Chapter Two for a description of the allegations and confirmed cases against UN peacekeeping personnel.
[23] Established through SC Res 955, UN SCOR, 3453rd mtg, UN Doc S/RES/955 (8 November 1994) ('*Statute of the International Criminal Tribunal for Rwanda*')('*ICTR Statute*').
[24] Ibid art 2(g).

enforced prostitution, indecent assault, and humiliating and degrading treatment as 'outrages upon personal dignity' and as war crimes.[25]

On 2 September 1998, the ICTR rendered its first judgment, *Prosecutor v Akayesu*, which articulated the first ever definition of rape in international law. In reaching its verdict, the Trial Chamber developed its own definition of rape as there was 'no commonly accepted definition... in international law.'[26] The Trial Chamber concluded that, within the circumstances of armed conflict, the 'mechanical description of objects and body parts' found in many national rape laws did not adequately capture the act of rape as 'a form of aggression.'[27] Instead, the Tribunal pronounced a broad and progressive definition of rape as 'a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.'[28] These coercive circumstances may include '[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation' and 'may be inherent in certain circumstances, such as armed conflict.'[29] Sexual violence, as distinct from rape, 'may include acts which do not involve penetration or even physical contact,' such as forced nudity.[30] In addition, the *Akayesu* judgment produced the first conviction of rape as a means of genocide[31] and rape and sexual violence as crimes against humanity.[32]

[25] Ibid art 4(e).
[26] *Prosecutor v Akayesu (Trial Chamber Judgment)* (International Criminal Tribunal for Rwanda, Case No ICTR 96-4-T, 2 September 1998) [686] ('*Akayesu*').
[27] Ibid [687].
[28] Ibid [688].
[29] Ibid [688].
[30] Ibid [688].
[31] Ibid [731].
[32] Ibid [578]-[584].

3.2.2 International Criminal Tribunal for the former Yugoslavia

The creation of the ICTY[33] in 1993 has also contributed to the development of the prohibitions against SEA in international criminal law. Similar to the subject-matter jurisdiction of the ICTR, the ICTY was established to prosecute grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity, in the former Yugoslavia since 1991.[34] The ICTY statute, which preceded the ICTR statute, was significant as the first statute of an international criminal tribunal to give explicit recognition to rape as a crime against humanity.[35] However, rape is the only sexual violence crime that is expressly prohibited in the ICTY statute. Unlike the ICTR statute, the ICTY statute does not expressly include the crimes of enforced prostitution or indecent assault as violations of the Geneva Conventions and Additional Protocols.[36]

Three months after the *Akayesu* judgment, the ICTY rendered its judgment in *Prosecutor v Furundžija*. The *Furundžija* judgment was hailed as an 'enormous moral and legal victory' by women's rights advocates.[37] *Furundžija* was the first ICTY trial to be based on the crime of rape and confirmed that the rape of even a single victim was worthy of prosecution.[38] The Trial Chamber began by conducting a broad survey of the crime of rape in treaty law,[39] customary international law,[40] national laws,[41] and in *Akayesu*.[42] In contrast to *Akayesu*, the

[33] The full name of the Tribunal is the 'International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.' SC Res 808, UN SCOR, 3175th mtg, UN Doc S/INF/49 (25 May 1993) ('*Statute of the International Criminal Tribunal for the Former Yugoslavia*') ('*ICTY Statute*').
[34] Ibid art 1-5.
[35] Ibid art 5(g).
[36] However, the crimes of enforced prostitution and indecent assault as a violation of the laws or customs of war are not expressly *excluded* either. See ICTY Statute art 3.
[37] Kelly D Ashkin, 'The International War Crimes Trial of Anto Furundžija: Major Progress Toward Ending the Cycle of Impunity for Rape Crimes' (1999) 12 *Leiden Journal of International Law* 935, 936.
[38] Ibid.
[39] *Prosecutor v Furundžija* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-95-17/1-T, 16 July 1998) [165]-[166] ('*Furundžija*').
[40] Ibid [168].
[41] Ibid [178-82].
[42] Ibid [176].

Trial Chamber developed a more specific definition which included the objective elements of 'sexual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or of the mouth of the victim by the penis of the perpetrator; by coercion or force or threat of force against the victim or a third person.'[43] The Trial Chamber also held that coercive oral, anal, or vaginal penetration all equally constituted the crime of rape.[44] Similar to *Akayesu*, the Trial Chamber noted that rape may be prosecuted as a crime against humanity, an act of genocide, a grave breach of the Geneva Conventions, or a violation of the laws or customs of war, if the requisite elements are met.[45] In addition, the *Furundžija* judgment confirmed that rape may be a form of torture and reaffirmed the prohibition of torture as *jus cogens*.[46]

On 22 February 2001, the ICTY rendered another momentous judgment, *Prosecutor v Kunarac, Kovać and Vuković* (*Kunarac*).[47] The *Kunarac* trial was significant as the first trial to consider mass rape within the armed conflict of the former Yugoslavia.[48] In determining its verdict, the Trial Chamber recalled the definitions of rape established by *Akayesu* and *Furundžija*. The Trial Chamber upheld the *Furundžija* definition as more satisfactorily fulfilling the criminal law principle of specificity (*nullem crimen sine lege stricta*) and agreed with the *actus reus* of the crime.[49] However, the *Kunarac* judgment questioned whether the element of 'coercion or force or threat of force' was too narrowly defined.[50] Returning to a survey of different national legal systems, the Trial Chamber concluded that the 'basic

[43] Ibid [185].
[44] Ashkin, above n 37, 948.
[45] *Furundžija* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-95-17/1-T, 16 July 1998) [172].
[46] Ashkin, above n 37, 945.
[47] *Prosecutor v Kunarac, Kovać and Vuković (Trial Chamber Judgment)* (International Criminal Tribunal for the Former Yugoslavia, Case No. IT-96-23/1-T, 22 February 2001) ('*Kunarac*').
[48] Doris Buss, 'Prosecuting Mass Rape: Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic' (2002) 10 *Feminist Legal Studies* 91, 91.
[49] *Kunarac* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-96-23/1-T, 22 February 2001) [437].
[50] Ibid [438].

underlying principle' in national rape laws was the 'penalising of violations of sexual *autonomy*.'[51] Rather than considering only circumstances of coercion or force, the Trial Chamber elaborated on the different contexts in which sexual autonomy may be compromised. This included circumstances which negated the victim's ability to refuse, consent, or voluntarily participate,[52] such as if the victim was in a vulnerable state (e.g. physical or mental illness, minority of age) or if the conditions surrounding the act reduced the victim's capacity to genuinely consent (e.g. psychological pressure, surprise, fraud). [53] Hence, the *Kunarac* judgment added to the *actus reus* of rape that the 'sexual penetration [also] occurs without the consent of the victim... assessed in the context of the surrounding circumstances'[54] and that the *mens rea* of rape is to include 'the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.'[55] Hence, the *Kunarac* judgment provides a more holistic understanding of the circumstances under which rape can occur by considering factors beyond the more obvious 'force or threat of force.'[56] The shift to focusing on sexual autonomy is also more empowering for survivors of sexual violence as it assumes the inherent right to make decisions over one's body. Furthermore, the *Kunarac* judgment was ground-breaking as the first conviction of the crimes of rape and enslavement which, together, amounted to a crime akin to sexual slavery.

3.2.3 International Criminal Court

On 1 July 2002, the statute of the ICC (Rome Statute) entered into force.[57] The codification of sexual violence crimes in the Rome Statute brought together and progressed the

[51] Ibid [440], emphasis in original.
[52] Ibid [442].
[53] Ibid [452].
[54] Ibid [460].
[55] Ibid [460].
[56] Buss, above n 48, 96.
[57] *Rome Statute*.

developments of the ICTY and ICTR. The Rome Statute lists 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity' as crimes against humanity under article 7 and as war crimes under article 8.[58] As evinced by the ICTY and ICTR case law, sexual violence may also be charged under other crimes within the Rome Statute, including: torture or enslavement as crimes against humanity;[59] torture or inhumane treatment as grave breaches of the Geneva Conventions;[60] outrages upon personal dignity as a violation of the laws and customs of war;[61] and cruel treatment and torture or outrages upon personal dignity as violations of Common Article 3.[62] The charging of sexual violence crimes under these more generic crimes, however, may become redundant in the light of the more extensive enumeration of sexual violence crimes in the Rome Statute.[63]

The Rome Statute is significant in developing the international law on sexual violence crimes in several ways. First, the Rome Statute is the first treaty to criminalise sexual violence crimes in both international and non-international armed conflict in the one instrument.[64] Second, sexual violence crimes may be prosecuted both during armed conflict (as war crimes or crimes against humanity) and peace time (as crimes against humanity).[65] Third, the Statute added the 'new' sexual violence crimes of sexual slavery, forced pregnancy, enforced sterilisation, and any other form of sexual violence of comparable gravity.[66]

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[58] Ibid art 7(g), 8(2)(b)(xxii) and 8(2)(e)(vi).
[59] Ibid art 7(1)(f)[torture]; art 7(1)(c)[enslavement].
[60] Ibid art 8(2)(a)(ii).
[61] Ibid art 8(2)(b)(xxi).
[62] Ibid art 8(c)(2)(i) [torture]; art 8(2)(c)(ii) [outrageous upon personal dignity].
[63] de Brouwer, above n 14, 170.
[64] Ibid 177.
[65] Rana Lehr-Lehnardt, 'One Small Step for Women: Female-Friendly Provisions in the Rome Statute of the International Criminal Court' (2002) 16 *Brigham Young University Journal of Public Law* 317, 340.
[66] de Brouwer, above n 14, 86.

The sexual violence crimes enumerated in the Rome Statute are further elaborated in the ICC Elements of Crimes (EoC). As a non-binding but authoritative source, the ICC EoC defines the elements of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and sexual violence.[67] The definition of rape within the ICC EoC has been influenced by the *Akayesu* judgment, the *Furundžija* judgment, and domestic laws on rape.[68] The physical acts include the penetration, however slight, of the body of the victim or the perpetrator (e.g. the victim may be forced to sexually penetrate the perpetrator, which is a newly included act); the penetration may be of 'any part of the body' (i.e. anal, vaginal, or oral penetration)[*Furundžija*]; and the penetration may be with an object not commonly deemed as sexual [*Akayesu*]. In addition, the penetration is to occur under force, threat of force or coercion [*Furundžija*], by taking advantage of a coercive environment [*Akayesu*], or against a person incapable of giving consent, which is defined as a person 'affected by natural, induced or age-related capacity.'[69]

The ICC EoC also codifies, for the first time in international law, the elements for the crimes of sexual violence, sexual slavery, enforced prostitution, and forced pregnancy. The crime of sexual violence is defined as an 'act of a sexual nature' that is compelled under circumstances such as 'fear of violence, duress, detention, psychological oppression or abuse of power,' or that involved 'taking advantage of a coercive environment' or of a

[67] *ICC EoC*, above n 16, art 8–11 and art 30-32.
[68] At drafting of ICC EoC, the *Kunarac* decicision had not yet been rendered and hence, did not influence the elements of rape in the ICC EoC. See de Brouwer, above n 14, 130.
[69] Ibid 134.
The elements of rape are:
1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.
See *ICC EoC*, above n 16, art 7(1)(g)-1[Crimes against humanity] and art 8(2)(b)(xxii)-1[War crimes].

person's 'incapacity to give genuine consent.'[70] Hence, the crimes of sexual violence may include non-penetrative sexual acts that do not fall within the definition of rape, such as touching, forced masturbation, forced nudity, or sexual mutilation.[71] In addition, the conduct must be of comparable gravity to the other sexual crimes enumerated in the Rome Statute and the perpetrator must be aware of the gravity of the conduct.[72]

Enforced prostitution is defined in a similar manner to the crime of sexual violence and, thereby, includes a broad range of acts which may be of a 'sexual nature.'[73] However, enforced prostitution contains the additional element of the perpetrator obtaining or expecting to obtain a pecuniary or other advantage in connection with the sexual act.[74]

Sexual slavery is defined within the ICC EoC as the causing of a person to engage in a sexual act under circumstances in which the perpetrator 'exercised any or all of the powers attaching to the right of ownership' over the person.[75] These powers may include, for example, the purchasing, selling, lending, or bartering of the person.[76]

Lastly, the ICC EoC defines the crime of forced pregnancy as the confinement of a woman who is forcibly made pregnant with the intent of affecting the ethnic composition of a population or carrying out other grave violations of international law.[77]

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[70] Ibid art 7 (1) (g)-6[Crime against humanity of sexual violence]; art 8(2)(b)(xxii)-6[War crime of sexual violence (international armed conflict)]; art 8(2)(e)(vi)-6[War crime of sexual violence (non-international armed conflict)].
[71] de Brouwer, above n 14, 132-133.
[72] *ICC EoC*, above n 16, art 7(1)(g)-6; art 8(2)(b)(xxii)-6; art 8(2)(e)(vi)-6.
[73] Ibid art (1)(g)-3; art 8(2)(b)(xxii)-3; art 8 (2)(e)(vi)-3.
[74] Ibid.
[75] Ibid art 7(1)(g)-2.
[76] Ibid art 7(1)(g)-2; art 8(2)(b)(xxii)-2; art 8(2)(e)(vi)-2.
[77] Ibid art 7(1)(g)-4; art 8(2)(b)(xxii)-4; art 8(2)(e)(vi)-4.

Despite the more extensive codification of sexual crimes in the Rome Statute, to date the ICC has not produced any convictions for crimes of sexual violence. The ICC Trial Chamber has thus far rendered three judgments (*Prosecutor v Lubanga*, *Prosecutor v Ngudjolo*, and *Prosecutor v Katanga*) in which all of the accused were charged with, but acquitted of, sexual violence crimes.[78] A further 14 individuals have been charged with sexual violence crimes and are awaiting trial.[79] Hence, it remains to be seen whether any of these charges will result in convictions for acts of sexual violence.

Analysis and Conclusion

In the context of UN peacekeeping operations, ICL may be useful for the definition of rape and of other sexual violence crimes that it provides. It may be possible to draw on the

[78] *Prosecutor v Lubanga (Trial Chamber Judgment)* (International Criminal Court, Trial Chamber I, Case No ICC-01/04-01/06, 14 March 2012); *Prosecutor v Ngudjolo (Trial Chamber Judgment)* (International Criminal Court, Trial Chamber II, Case No ICC-01/04-02/12, 18 December 2012); Prosecutor v Katanga (Trial Chamber Judgment) (International Criminal Court, Trial Chamber II, Case No ICC-01/04-01/07, 7 March 2014).

[79] Women's Initiatives for Gender Justice, 'Gender Report Card 2013 on the International Criminal Court' (Women's Initiatives for Gender Justice, March 2014), 61.

The 14 individuals still awaiting trial or with cases in progress who have been charged with sexual violence crimes are:

- *Prosecutor v Kony (Warrant of Arrest)* (International Criminal Court, Case No ICC-02/04-01/05-53, 27 September 2005)
- *Prosecutor v Katanga and Chui (Case In Progress)* (International Criminal Court, Case No ICC-01/04-01/07)
- *Prosecutor v Ntaganda (Warrant of Arrest)* (International Criminal Court, Case No ICC-01/04-02/06, 28 April 2008)
- *Prosecutor v Mbarushimana (Warrant of Arrest)* (International Criminal Court, Case No ICC-01/04-01/07, 28 September 2010)
- *Prosecutor v Mudacumura (Warrant of Arrest)* (International Criminal Court, Case No ICC-01/04-01/12, 13 July 2012)
- *Prosecutor v Gombo (Case in Progress)* (International Criminal Court, Case No ICC-01/05 -01/08)
- *Prosecutor v Al Bashir (Warrant for Arrest)* (International Criminal Court, Case No ICC-02/05-01/09, 4 March 2009)
- *Prosecutor v Ahmad Harun (Warrant of Arrest)* (International Criminal Court, Case No ICC-02/05-01/07-2, 27 April 2007)
- *Prosecutor v Ali Kushayb (Warrant of Arrest)* (International Criminal Court, Case No ICC-02/05-01/07-3, 27 April 2007)
- *Prosecutor v Kenyatta (Case in Progress)* (International Criminal Court, Case No ICC-01/09-02/11, 23 January 2012)
- *Prosecutor v Laurent Gbagbo (Case in Progress)* (International Criminal Court, Case No ICC-02/11-01/11, 12 June 2014)
- *Prosecutor v Simone Gbagbo (Warrant of Arrest)* (International Criminal Court, Case NoICC-02/11-01/12, 29 February 2012)
- *Prosecutor v Blé Goudé (Warrant of Arrest)* (International Criminal Court, Case No. ICC-02/11-02/11, 21 December 2011)

elements of rape and of other sexual violence crimes to interpret the concept of sexual abuse in the 2003 Bulletin. For example, the 2003 Bulletin defines one 'element' of sexual abuse as being the 'physical intrusion of a sexual nature.' Turning to the ICC EoC and the jurisprudence of the international criminal tribunals, it may be possible to argue that 'physical intrusion', which is phrased as a physical 'invasion' in the ICC EoC and in *Akayesu*, may include the penetration, however slight, of the vagina, anus or mouth; may include the penetration of the victim or the victim being forced to penetrate the perpetrator; and may include penetration by objects that are not normally deemed as sexual. ICL may also provide some insight into the second 'element' of sexual abuse in the 2003 Bulletin definition which is the circumstances of 'force or under unequal or coercive conditions.' Drawing upon the jurisprudence of *Akayesu*, these coercive conditions may include '[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation.'[80] In accordance with *Kunarac*, these conditions may also include circumstances which involve the violation of the victim's sexual autonomy which occurs when 'the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant.'[81] The 'factors [that] negate true consent' may include the 'use of force, the unconsciousness or inability to resist of the victim, or misrepresentation by the perpetrator.'[82] In addition to 'force' and 'coercion', however, the 2003 Bulletin definition includes the notion of 'unequal' conditions. This expands the circumstances under which acts of sexual abuse may be committed by UN peacekeeping personnel. Therefore, it is important to note that whilst ICL may assist in the interpretation of 'sexual abuse' in the 2003 Bulletin, the prohibitions within ICL were also developed under different circumstances to the prohibitions developed for UN peacekeeping personnel.

[80] *Akayesu* (International Criminal Tribunal for Rwanda, Case No ICTR 96-4-T, 2 September 1998) [688].
[81] *Kunarac* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-96-23/1-T, 22 February 2001) [457].
[82] Ibid [458].

In regard to the application of ICL to UN peacekeeping operations, the focus on 'the most serious crimes' means that ICL does not cover the range of acts of SEA that may be perpetrated by peacekeeping personnel. On the one hand, it is highly unlikely that UN peacekeeping personnel would commit acts as grave as sexual slavery, enforced prostitution, or forced pregnancy. On the other hand, ICL does not cover the 'less grave' but widely perpetrated forms of SEA that do occur, such as buying prostituted persons or exploiting a position of vulnerability to gain sexual favours. Hence, ICL is not sufficient on its own to cover the scope of acts that are of concern in this thesis and that fall within the 2003 Bulletin definition.

In addition, the requisite elements for an act of SEA to also be a violation of ICL, such as constituting a crime against humanity, a war crime or genocide, are unlikely to be fulfilled by UN peacekeeping personnel. It is extremely unlikely that an act of SEA by a UN personnel member will fulfil the elements of, for example, a crime against humanity, in which the act of SEA was perpetrated as part of a widespread or systemic attack against a civilian population. If these additional elements are not fulfilled, then the act of SEA is not a violation of international criminal law. Hence, this may limit the extent to which ICL may be used to argue that the acts of SEA committed by peacekeeping personnel are violations of international law.

3.3 The International Law on Human Trafficking

Prohibitions against SEA may also be found in the international legal regime to combat human trafficking. Several international treaties have been concluded that prohibit human trafficking.[83] The most recent and significant treaty is the 2000 *UN Protocol to Prevent,*

[83] *International Agreement for the Suppression of the White Slave Trade*, *as amended by the 1949 Protocol*, open for signature 18 May 1904, 92 UNTS 19 (entered into force 21 June 1951); *International Convention for the Suppression of the White Slave Traffic*, open for signature 4 May 1910, 30 UNTS 23 (entered into

Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Protocol).[84] The UN Protocol is a broad instrument that covers all forms of human trafficking, including trafficking for the purposes of sexual exploitation. In the drafting of the UN Protocol, intense debates surrounded the issue of what should or should not be included within the concept of 'sexual exploitation'. Hence, an analysis of the UN Protocol can contribute to an understanding what may constitute 'sexual exploitation' under international law. In turn, this may assist in the interpretation of 'sexual exploitation' in the 2003 Bulletin which has been defined as 'any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.'[85]

3.3.1 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The UN Protocol aims to combat trafficking in persons as an aspect of international organised crime.[86] The purpose of the Protocol is threefold: to prevent and combat trafficking in persons, particularly women and children; to protect and assist victims of trafficking; and to promote cooperation among States.[87] The treaty structure reflects these three purposes with a section dedicated to each purpose. In addition, as a supplement to the

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force 21 June 1951); *International Convention for the Suppression of the Traffic in Women and Children*, open for signature 30 September 1921, 53 UNTS 39 (entered into force 24 April 1950); *International Convention for the Suppression of the Traffic of Women of Full Age*, open for signature 11 October 1933, 150 UNTS 431 (entered into force 24 August 1934); *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, open for signature 21 March 1950, 96 UNTS 271 (entered into force 25 July 1951)('*1949 Convention*').

[84] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, open for signature 12 December 2000, UN Doc A/55/383 (entered into force 25 December 2003) ('*UN Protocol*').

[85] *2003 Bulletin*, above n 1, 1.

[86] Martti Lehti and Kauko Aromaa, 'Trafficking for Sexual Exploitation' (2006) 34 *Crime and Justice* 133, 139.

[87] *UN Protocol* art 2.

UN Convention Against Transnational Crime (CTOC), the provisions of the CTOC apply *mutatis mutandis* to the offences established within the UN Protocol.[88]

The UN Protocol provides the first definition of human trafficking upon which international agreement has been reached. The definition includes the exploitation of prostitution and other forms of sexual exploitation as one possible purpose of human trafficking.

Article 3 defines 'trafficking in persons' as:

> the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[89]

The definition of trafficking has three elements. All elements need to be fulfilled for 'trafficking in persons' to be established under the UN Protocol.[90] For the trafficking of children, however, only the first and third element must be fulfilled.[91] The three elements are:

1) the action element: the *actus reus* requirement which consists of the actions undertaken to traffick a person. The acts may include: 'recruitment' or the first act in the exploitation

[88] Ibid art 1(2).
[89] Ibid art 3(a).
[90] Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Reponses to Human Trafficking in the Greater Mekong Subregion* (Routledge, 2012) 108.
[91] *UN Protocol* art 3(c).

process; the movement of people including 'transportation' and 'transfer'; and the acts committed at the end destination including 'receipt' and 'harbouring.'[92]

2) the means element: a further *actus reus* requirement which involves the means through which the first element is undertaken for the end purpose of exploitation.[93] The Protocol outlines a range of means which have the purpose of achieving 'control over another person,'[94] such as threats, the use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person. Hence, the 'means' are not only limited to physical force but include other more subtle and indirect ways of achieving control.[95] In practice, the most common means is the 'abuse of a position of vulnerability.'[96]

3) the purpose element: the *mens rea* requirement which involves the intention that the person is trafficked for the end purpose of exploitation.[97] Exploitative purposes will consist 'at minimum' of the exploitation of the prostitution of others, other forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude, or the removal of organs. Hence, the crime of trafficking contains a *dolus specialis* requirement, that is, it requires the specific intent of the end purpose of exploitation.[98] However, the end purpose does not need to be fulfilled. The intention of exploitation itself is sufficient to establish the *mens rea* for trafficking in persons.[99]

[92] Kneebone and Debeljak, above n 90, 108.
[93] Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010) 31.
[94] Kneebone and Debeljak, above n 90, 110.
[95] Ibid.
[96] This concept will be discussed in greater detail later in this chapter. Ibid 110.
[97] Gallagher, above n 93, 34.
[98] Ibid.
[99] Ibid.

3.3.1.1 Sexual Exploitation

The purpose of exploitation is the key element of the trafficking definition.[100] The trafficking definition is 'triggered by the fact that, at the destination, it becomes clear that the victim has been deceived and is being exploited.'[101] Under the UN Protocol, exploitation includes 'both bringing the person into an exploitative position and maintaining the exploitation.'[102]

Although the UN Protocol covers a range of exploitative end purposes, for the purposes of this thesis, the discussion will focus on the aspects of the trafficking definition that are relevant to the issue of SEA. These are: the definition of 'sexual exploitation' (within the purpose element) and the 'abuse of a position of vulnerability' (within the means element). Both of these concepts are contained in the 2003 Bulletin definition of SEA.

The specific sexual conduct which the UN Protocol prohibits is not expressly addressed within the Protocol or in any accompanying explanatory documents. Article 3 states that exploitation may include 'the exploitation of the prostitution of others or other forms of sexual exploitation.'[103] The 'exploitation of the prostitution of others' draws on the wording of the 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* in which State parties agreed to punish persons who 'exploit… the prostitution of another person' to 'gratify the passions of another.'[104] However, neither the 1949 Convention nor the UN Protocol define the terms 'exploitation of the prostitution of others.'[105] In regard to the UN Protocol, this lack of definition was intentional as the drafters were unable to reach agreement due to the intense debates that surrounded the issue of

[100] Kneebone and Debeljak, above n 90, 115.
[101] Ibid.
[102] Ibid.
[103] *UN Protocol* art 3.
[104] *1949 Convention* art 1.
[105] Ann D Jordan, 'Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings' (2002) 10(1) *Gender and Development* 2, 31. This term is also used in CEDAW which will be discussed later in this chapter.

prostitution. These debates mainly concerned the issue of whether all forms or only some forms of prostitution should be considered exploitative.[106] These debates remain unresolved.[107]

In the subsequent *Model Law Against Trafficking In Persons* (Model Law), a guidance paper issued by the UN Office on Drugs and Crime (UNODC), the 'exploitation of prostitution of others' has been defined as 'the unlawful obtaining of financial or other material benefit from the prostitution of another person.'[108] In regard to the profits earned, the Model Law includes both monetary gains and the gaining of other material benefits, thereby covering the range of things that a person may be prostituted for. The Commentary does state, however, that the definition provided is only one example of many possible definitions.[109]

The second part of the phrase, 'other forms of sexual exploitation', is also unclear and not defined in the Protocol or elsewhere in international law. This phrase is even more ambiguous and open to even broader interpretations.[110] According to the Model Law, '"[s]exual exploitation" shall mean the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual

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[106] Ibid 31.

[107] The sex work position argues that prostitution should be recognised as a form of work, and that women should have the right to choose to engage in sex work and to have their human rights and worker's rights protected as sex workers. It is argued that sex work per se is not exploitative and that certain conditions need to be met before prostitution becomes exploitative. In support of the sex work position, see the *Global Alliance Against Traffic in Women* <http://www.gaatw.org/>. Last Accessed: 12 August 2014.
The abolitionist position argues that prostitution is inherently exploitative because it is based upon the sexual objectification of women and because of the impossibility of disentangling the operation of patriarchal power relations from the act of purchasing sex. In support of the abolitionist position, see the *Coalition Against the Trafficking in Women* <http://www.catwinternational.org/>. Last Accessed: 12 August 2014.

[108] United Nations Office on Drug and Crime, *Model Law Against Trafficking In Persons*, UN Doc V.09-81990(E) (5 August 2009) 14 ('*UNODC Model Law*').

[109] Ibid.

[110] Gallagher, above n 93, 38.

services, including pornographic acts or the production of pornographic materials.'[111] Hence, the Model Law provides a range of acts through which sexual exploitation may occur. Nonetheless, similar to the controversy surrounding the phrase 'exploitation of prostitution', whether these sexual acts are always exploitative or whether certain conditions need to be met for these acts to become exploitative has been debated.[112] How expansive the definition or circumstances of 'sexual exploitation' was intended to be by the drafters remains unclear.[113] However, most advocates and State parties do agree that the acts need to reach a certain threshold of 'seriousness' to be considered 'sexual exploitation'.[114]

The lack of definition for 'exploitation of prostitution' in the UN Protocol has left room for the 're-insertion of competing perspectives and ideologies.'[115] During the drafting of the UN Protocol, there was intense disagreement over whether prostitution should be considered inherently exploitative (the abolitionist position)[116] or whether certain conditions needed to be met before prostitution became exploitative (the sex work position).[117] The inclusion of the 'exploitation of the prostitution of others' has been interpreted by both groups as supporting their position. For abolition advocates, the phrase 'exploitation *of* prostitution' has been taken as an affirmation of the indivisibility of these two concepts: 'prostitution'

[111] *UNODC Model Law*, above n 109, 20.
[112] Barbara Sullivan, 'Trafficking in Women: Feminism and New International Law' (2003) 5(1) *International Feminist Journal of Politics* 67. The terms 'sexual exploitation' have also been used in regards to child sexual exploitation and have taken on a specific meaning within this context. This will be addressed later in the chapter.
[113] Gallagher, above n 93, 38.
[114] Ibid 49.
[115] Vanessa E Munro, 'Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution' (2006) 46 *British Journal of Criminology* 318, 325.
[116] This consisted of The International Human Rights Network, which was comprised of the Coalition Against the Trafficking in Women (CATW) and 140 other NGOs. See Janice G Raymond, 'The New UN Trafficking Protocol' (2002) 25(5) *Women's Studies International Forum* 491, 493.
[117] The anti-abolitionist position was taken up by a coalition of NGOs called the Human Rights Caucus which was comprised of the Global Alliance Against Traffic in Women (GAATW) among others. See, ibid and *Global Alliance Against Traffic in Women* <http://www.gaatw.org/>. Last Accessed: 12 August 2014.

and 'exploitation'.[118] Abolitionist have argued that 'the Protocol establishes that the exploitation of prostitution and trafficking cannot be separated' and that 'all victims of trafficking in persons are protected, not just those who can prove force.'[119] On the other hand, sex work advocates have interpreted the specific mention of the *exploitation* of prostitution as confirming that there also exists *non-exploitative* prostitution to which the UN Protocol does not apply.[120] Sex work advocates have argued that the UN Protocol is 'a victory for those who argue that the only way to protect sex workers' rights is to recognise prostitution as a legitimate profession.'[121]

Many of these interpretations, however, have been criticised as going beyond the intentions of the drafters.[122] The UN Protocol does not assert any definitive position on prostitution and intentionally leaves questions about the legality of prostitution to the domestic jurisdiction of States.[123] Hence, the UN Protocol does not provide a prohibition against prostitution nor does it provide any human rights protections for sex workers outside the context of human trafficking.[124]

3.3.1.2 Abuse of a Position of Vulnerability

Another aspect of the trafficking definition which is relevant to the issue of SEA is the 'abuse of a position of vulnerability' (APOV). The concept of APOV has also not been defined within the UN Protocol. Evidence suggests that the concept was inserted at a late stage of the drafting process, in part to achieve some consensus amongst the parties disagreeing over

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[118] Janie A Chuang, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy' (2009-2010) 158 *University of Pennsylvania Law Review* 1655, 1676.
[119] Raymond, above n 116, 495.
[120] Chuang, above n 118, 1676.
[121] Jo Doezema, 'Who Gets to Choose? Coercion, Consent and the UN Trafficking Protocol' (2002) 10(1) *Gender and Development* 20, 24.
[122] Kara Abramson, 'Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol' (2003) 44 *Harvard International Law Journal* 473, 497.
[123] Ibid 496.
[124] Chuang, above n 118, 1677.

the issue of prostitution.[125] Hence, the concept of APOV has been described 'as an avenue through which the range of exploitative practices identified as trafficking could potentially be expanded – while being sufficiently vague to not lock States into any fixed position on the contentious issue of prostitution.'[126]

The inclusion of APOV is progressive as it allows for a more nuanced analysis of the validity of the consent that is given in the face of power imbalances or circumstances creating vulnerability.[127] However, the concept can be difficult to interpret and apply.[128] The *travaux préparatoires* states that APOV 'refer[s] to any situation in which the person involved has no real or acceptable alternative but to submit to the abuse involved.'[129] A member of the drafting party also described the concept as reflecting the drafters' desire to capture 'the myriad, more subtle means of coercion by which people are exploited.'[130]

Some of the factors that may create a position of vulnerability are addressed in article 9(4) of the UN Protocol, in which State parties are obligated to 'take or strengthen measures… to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.'[131] The UNODC Model Law has also provided a list of factors that may contribute to a 'position of vulnerability' including: entering a country illegally; pregnancy; substance addiction; reduced mental capacity due to being a child; illness or physical or mental disability; the promise or the giving of money by a person in a position of authority; being in a precarious

[125] Ibid 18 and 24.
[126] Ibid 18.
[127] Munro, above n 115, 330.
[128] Kneebone and Debeljak, above n 90, 110.
[129] United Nations Office of Drug and Crime, *Travaux Preparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 345 ('*Travaux Preparatoires*').
[130] 'Abuse of a Position of Vulnerability and Other "Means" within the Definition of Trafficking in Persons' (Issue paper, United Nations Office of Drug and Crime, April 2013) 18 ('*UNODC Issue Paper*').
[131] *UN Protocol* art 9(4).

situation from the standpoint of social survival; and other relevant factors.[132] Hence, the Model Law provides a broad list of circumstances which may increase the vulnerability of a person to acts of exploitation.

An Issue Paper by the UNODC, however, has emphasised the importance of the difference between a position of vulnerability and the *abuse* or *intention to abuse* a position of vulnerability as a *means to achieve* the trafficking of a person.[133] The UN Model Law has suggested that it may be best to focus on the *awareness* of the alleged offender of the vulnerability of the victim and the offender's *intention* to take advantage of the victim's vulnerability,[134] rather than the list of factors that may create a vulnerable position.

The Commentary to the *Council of Europe Convention against Trafficking in Human Beings 2005* has also provided an explanation of 'vulnerability'. The Commentary states that in regard to 'vulnerability':

> the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.

The importance of human rights has also been recognised in the *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking* (UN Principles).[135] The UN Principles assert the 'primacy of human rights' and calls on States to ensure that the 'human rights of trafficked persons shall be at the centre of all efforts to prevent and

[132] *UNODC Model Law*, above n 108, 9-10.
[133] *UNODC Issue Paper*, above n 130, 15.
[134] *UNODC Model Law*, above n 108, 9-10.
[135] Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002).

combat trafficking and to protect, assist and provide redress to victims.'[136] Hence, whilst the responsibility for the implementation of the UN Protocol may fall under the UNODC and within the realm of international criminal law, the Protocol has in fact 'create[d] criminal liability for what is essentially a breach of human rights'[137] and has been used by many activists to advocate for the human rights of trafficking victims.

Analysis and Conclusion

The international law on human trafficking may be useful for understanding the concept of 'sexual exploitation' in the 2003 Bulletin. For example, according to the Model Law, the term 'sexual exploitation' may mean 'the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials.' The factors that create a position of vulnerability may include: entering a country illegally; the age of minority; physical or mental disease or disability; substance addiction; the promise or the giving of money by a person in a position of authority; or being in a precarious situation from the standpoint of social survival.[138] Hence, the abuse of a position of vulnerability has been defined as 'any situation in which the person involved has no real or acceptable alternative but to submit to the abuse involved.'[139]

The international law on human trafficking can provide guidance in determining whether sexual exploitation has been committed by UN peacekeeping personnel. According to the UNODC Issue Paper, it is important to assess the perpetrator's awareness of the victim's vulnerability and his intention to take advantage of this vulnerability. Factors creating a position of vulnerability, such as age of minority or a precarious situation from the

[136] Ibid art 1.
[137] Kneebone and Debeljak, above n 90, 114.
[138] *UNODC Model Law*, above n 130, 9-10.
[139] *Travaux Preparatoires*, above n 129, 345.

standpoint of social survival, may be present in the circumstances in which acts of SEA by UN peacekeeping personnel are committed. Hence, it needs to be assessed whether the accused UN personnel member was aware of the victim's position of vulnerability and if he took advantage of this vulnerability to engage the victim in an act of sexual exploitation, such as prostitution, sexual servitude, other kinds of sexual services, or pornographic acts. Therefore, the UN Protocol can provide guidance on how to interpret and apply the concept of 'sexual exploitation' in the 2003 Bulletin.

Nonetheless, the concept of 'sexual exploitation' in the UN Protocol is still subject to significant controversy, especially in relation to the issue of prostitution. Whilst the UN Protocol provides neither a clear prohibition against or support for prostitution, the 2003 Bulletin unequivocally bans prostitution use for UN peacekeeping personnel through expressly prohibiting the '[e]xchange of money… for sex.'[140] In addition, the 2003 Bulletin also ban the exchange of employment, goods, or services for sex or sexual favours.[141] Hence, the UN has 'zero-tolerance' towards what it terms 'transactional sex,'[142] which includes not only prostitution use but also other sexual activities that involve an exchange that is exploitative.[143] Furthermore, the 2003 Bulletin definition includes the gaining of 'social and political benefits' from the exploitation, which is again broader than the scope of sexual exploitation in the UN Protocol. Hence, the concept of 'sexual exploitation' within the UN Protocol is useful, but also different, to the concept of 'sexual exploitation' in the 2003 Bulletin. Consequently, the acts of SEA prohibited in the 2003 Bulletin are much broader than the acts of SEA that are prohibited under the international law on human trafficking.

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[140] *2003 Bulletin*, above n 1, art 3.2(c).
[141] Ibid.
[142] See, eg, *Outreach: Communications Campaigns* (2010) United Nations Conduct and Discipline Unit <http://cdu.unlb.org/Outreach/CommunicationsCampaigns.aspx>. Last Accessed: 12 August 2014.
[143] Kathleen Jennings, 'Protecting Whom?: Approaches to Sexual Exploitation and Abuse in UN peacekeeping operations' (Fafo Report, 2008) 22.

It is also important to note that the purpose of the UN Protocol was not to prohibit SEA in general but to combat one specific aspect of transnational organised crime, that is, the trafficking in persons. In regard to UN peacekeeping operations, international personnel have indeed been accused of the horrendous crime of human trafficking, such as in Kosovo.[144] However, for human trafficking to be established, all three elements of the trafficking definition need to be fulfilled: the act, the means, and the purpose.[145] In regard to the allegations made against UN personnel, only a small percentage have alleged trafficking in persons. As discussed in Chapter Two, many of the cases against UN personnel may have involved an abuse of a position of vulnerability (the second element) and have had the end purpose of exploitation (the third element). However, many of the reported cases have not fulfilled the first element (the action element). UN peacekeeping personnel have rarely been accused of the 'action' of recruiting, transporting, transferring, harbouring or receiving persons for the purpose of exploitation. In addition, as the examples in Chapter Two demonstrate, in many cases the abuse of a position of vulnerability is committed as a *means to gain sexual gratification* rather than as *a means to achieve the trafficking of a person*. Hence, whilst the concepts of 'sexual exploitation' and the 'abuse of the position of vulnerability' within the UN Protocol are useful for understanding the analogous concepts in the 2003 Bulletin, the allegations against UN peacekeeping personnel have also been different to and broader than the acts that are covered by the UN Protocol.

[144] See, eg, Sarah Elizabeth Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Centre for Strategic and International Studies, 2005); Jennifer Murray, 'Who will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina' (2003) 34 *Columbia Human Rights Law Review* 475.

[145] Unless, as discussed, the trafficking is of children in which only the act and the purpose elements need to be fulfilled. *UN Protocol* art 3(c).

3.4 International Human Rights Law

The final area of international law to be considered is international human rights law. In contrast to IHL, ICL, and the international law on human trafficking, international human rights law is much broader in its scope, reach, and application. The protections provided in international human rights law apply during both armed conflict and in times of peace, in both criminal and civil contexts, and State parties may be held accountable for violations by both State and non-State actors. Hence, international human rights law may be able to cover the acts of SEA which fall beyond the scope of the other areas of international law discussed thus far. In this section, the range of SEA which is prohibited under international human rights law will be examined. In particular, the human rights enshrined for women under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and the protection of children under the *Convention on the Rights of the Child* (CRC) will be considered. The extent to which acts of SEA may also be a violation of other core human rights treaties, such as the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), will also be discussed. It will be demonstrated that the breadth of human rights means that international human rights law may provide the most useful legal framework to argue that many of the acts of SEA as defined in the 2003 Bulletin are indeed prohibited under international law.

3.4.1 Convention on the Elimination of All Forms of Discrimination Against Women[146]

Adopted in 1979, CEDAW is the only international human rights treaty that specifically enshrines and protects the human rights of women. CEDAW is a broad human rights instrument which prohibits a range of discrimination against women including

[146] See Appendix B.

discrimination in any legislative or judicial form,[147] public institutions,[148] social or cultural practices,[149] public or political life,[150] nationality,[151] education,[152] employment,[153] health care,[154] economic participation,[155] rural life,[156] legal capacity,[157] and in marriage and family relations.[158] Whilst CEDAW does not expressly prohibit sexual violence or violence against women in general, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has unequivocally adopted the position that violence against women constitutes a form of discrimination against women and, hence, is a violation of CEDAW. This is evident in much of the work of the CEDAW Committee, such as in its consideration of State party reports; its interaction with other UN entities, NGOs, civil society, and the media; and in the views issued on the individual complaints that it has received.[159]

The position of the CEDAW Committee is elaborated in General Recommendation No 19 on 'Violence Against Women' which expressly states that the 'definition of discrimination[160] includes gender-based violence, that is, violence that is directed against a woman because

[147] *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981) art 2 ('*CEDAW*').
[148] Ibid.
[149] Ibid art 5.
[150] Ibid art 7 and 8.
[151] Ibid art 9.
[152] Ibid art 10.
[153] Ibid art 11.
[154] Ibid art 12.
[155] Ibid art 13.
[156] Ibid art 14.
[157] Ibid art 15.
[158] Ibid art 16.
[159] For example, in its latest report, the CEDAW Committee lists VAW as a 'key area of concern' in a briefing note for Country Rapporteurs and raises the issue of VAW in it decision 52/I on the arms trade treaty and decision 52/IX on the Syrian Arab Republic. See *Report of the Committee on the Elimination of Discrimination against Women: Fifty-second session (9-27 July 2012), Fifty-third session (1-19 October 2012), Fifty-fourth session (11 February-1 March 2013)*, UN GAOR, 68th session, Supp No 38, UN Doc A/68/38 (2013) 18, 23 and 33.
[160] Discrimination is defined in article 1 of CEDAW as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' See *CEDAW* art 1.

she is a woman or that affects women disproportionately.'[161] The General Recommendation states that this includes acts, or threats of acts, that inflict physical, mental, or sexual harm or suffering on women.[162] Furthermore, the General Recommendation provides that the obligation to eliminate discrimination under the Convention applies to both acts committed by the State and any discriminatory acts undertaken by any person, organisation, or enterprise.[163]

CEDAW is also the only international human rights treaty to expressly address the sexual exploitation of adult women. Article 6 obligates State parties to 'take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.'[164] This provision is important for recognising and prohibiting the traffic and exploitation of prostitution of women. Nonetheless, in this provision, as elsewhere in international law, the term 'exploitation of prostitution' is left undefined and the precise type of conduct that constitutes 'exploitative' prostitution remains unclear. Similarly, the legal obligations on State parties within article 6 are not well defined. State parties are obligated to 'suppress' the traffic and exploitation of prostitution, including through legislative measures. This may imply a legislative regime of abolition, prohibition or criminalisation to achieve the 'suppression' of prostitution, as opposed to the 'management' of prostitution through measures such as legalisation or regulation. However,

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[161] Committee on the Elimination of Discrimination against Women, *General Recommendation 19: Violence Against Women*, 11th sess, UN Doc A/47/38 (1992) 1 [6] ('*CEDAW General Recommendation No 19*').
The CEDAW Committee is a body of 23 gender experts whose mandate is to oversee the implementation of the obligations in CEDAW by State parties. The establishment and work of the CEDAW Committee is enshrined in articles 17 to 22 of the Convention. The work of the CEDAW Committee includes the issuing of General Recommendations.
General Recommendations (or General Comments) are issued by UN Treaty Bodies to elaborate on the Committee's view of the obligations that are enshrined within a Convention and/or to provide State parties with guidance on the application of a Convention to a particular situation. For more information on the General Recommendations by the CEDAW Committee, see *General Recommendations* (2009) UN Women <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>. Last Accessed: 12 August 2014.
[162] Ibid.
[163] Ibid [9]
[164] *CEDAW* art 6.

CEDAW does not take any explicit position on the legal regime that Member States should adopt towards prostitution.[165]

The position of the CEDAW Committee on the legality of prostitution is similarly unclear. In the CEDAW Committee's work, the Committee has frequently used the phrase 'exploitation of prostitution of women' without further clarification.[166] The Committee has also gravitated between an abolitionist and a sex work approach in its work without expressly supporting either position. For example, the Committee has repeatedly called on State parties to take measures to discourage the male demand for prostitution,[167] which is similar to the approach taken by the abolitionist coalition.[168] In its Concluding Observations to Sweden, a key abolitionist country which has criminalised 'demand', the Committee stated that it 'welcome[ed] the criminalization of the purchase of sexual services.'[169] Nonetheless, it raised concern that this approach 'might have increased the incidence of clandestine prostitution, thereby rendering prostitutes more vulnerable' and has requested for Sweden to undertake further evaluations.[170] Hence, the Committee has expressed a cautious, rather

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[165] Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol* (2003) 44 *Harvard International Law Journal* 473, 499.

[166] See, eg, Committee on the Elimination of Discrimination against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Uzbekistan*, 36th sess, UN Doc CEDAW/C/UZB/CO/3 (25 August 2006) [16] ('*CEDAW Concluding Observations Uzbekistan*'); Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Paraguay*, 50th sess, UN Doc CEDAW/C/PRY/CO/6 (8 November 2011) [22]-[23]; Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Russian Federation*, 46th sess, UN Doc CEDAW/C/USR/CO/7 (16 August 2010) [28]-[29].

[167] See, eg, *CEDAW Concluding Observations Uzbekistan*, above n 164, [26]; Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Libyan Arab Jamahiriya*, 43rd sess, UN Doc CEDAW/C/LBY/CO/5 (6 February 2009) [28]; Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Sixth Periodic Report of Equatorial Guinea*, 53rd sess, UN Doc CEDAW/C/GNQ/CO/6 (9 November 2012) [28(b)].

[168] See, eg, *Ending the Demand* (2011) Coalition Against the Trafficking in Women (CATW) International <http://www.catwinternational.org/ProjectsCampaigns/Ending>. Last Accessed: 12 August 2014.

[169] *Report of the Committee on the Elimination of Discrimination against Women: Twenty-fourth session (15 Janury-2 February 2001), Twenty-fifth session (2-20 July 2001),* UN GAOR, 56th sess, Supp No 38, UN Doc A/56/38 (2001) [354].

[170] Ibid [355].

than unequivocal, support for the criminalisation of demand which is a core feature of the abolitionist approach.

The CEDAW Committee has also repeatedly called on State parties to establish or support exit programs for women to leave prostitution, such as providing rehabilitation and reintegration services,[171] training and education,[172] and shelters and other services.[173] This emphasis on supporting women to exit the sex industry, rather than supporting women who are in the industry, is also more closely aligned with an abolitionist approach.

Nonetheless, the Committee has on occasion expressed its concern for the 'discrimination against women sex workers and the lack of State Party's action aimed at ensuring safe working conditions' and has criticised the criminalisation of prostitution which 'has a disproportionate impact on prostitutes rather than on the prosecution and punishment of pimps and traffickers.'[174] Concerns such as this reflect a sex work position. However, urging State parties to ensure that women can work safely as sex workers has been much less frequent than urging State parties to support women to exit the industry. This is also evident in the language of the CEDAW Committee which has overwhelming preferred to use the word 'prostitution' (which is used by abolitionists) rather than 'sex work' (which is used by sex work advocates). Hence, similar to the UN Protocol, the lack of definition of

[171] See, eg, Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Azerbaijan*, 44th sess, UN Doc CEDAW/C/AZE/CO/4 (7 August 2009) [24].
[172] See, eg, *Report of the Committee on the Elimination of Discrimination against Women: Twenty-eighth session (13-31 January 2003) Twenty-ninth session (30 June-18 July 2003)*, UN GAOR, 58th sess, Supp No 38, UN Doc (A/58/38) (2003) [414].
[173] See, eg, Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Zambia,* 49th sess, UN Doc CEDAW/c/ZMB/CO/5-6 (19 September 2011) [24(d)].
[174] Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Hungary*, 54th sess, UN Doc CEDAW/C/HUN/CO/7-8 (26 March 2013) [22]; Committee on the Elimination of Discrimination against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: China*, 36th sess, UN Doc CEDAW/C/CHN/CO/6 (25 August 2006) [19].

'exploitation of prostitution' has left room for the insertion of competing ideologies, including by the members of the CEDAW Committee.

General Recommendation No 19 on 'Violence Against Women' also provides commentary on article 6. The General Recommendation draws attention to several factors that may increase the risk of SEA for women and girls. For example, the General Recommendation states that '[p]overty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence.'[175] It also acknowledges that '[w]ars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women.'[176] The development of 'new forms of sexual exploitation', such as sex tourism and so-called mail order brides, are also recognised within the General Recommendation. In regard to the SEA committed during armed conflict, the General Recommendation calls for 'specific protective and punitive measures' to be put in place.[177]

Other articles within CEDAW may also be applicable to the issue of SEA. For example, article 5 calls on State parties 'to modify social patterns and conduct, with a view to achieving the elimination of prejudices and customary and all other practices which are based on… [the] stereotyped roles for men and women.'[178] It may be argued that acts of SEA are deeply embedded with stereotyped ideas about the role of men and women and the patriarchal construction of male and female sexuality. For example, a patriarchal view of sexuality may assert that men's sex drive requires release and that it is the role of women to be the

[175] *CEDAW General Recommendation No 19*, above n 161, [15].
[176] Ibid [16].
[177] Ibid.
[178] *CEDAW* art 5.

recipient of that release.[179] A belief in patriarchal gender roles may also view sexual abuse or sexual exploitation as unfortunate consequences of when men's ability to achieve sexual release is frustrated or denied.[180] This may be seen, for example, in the mistaken belief that prostitution is 'inevitable' or the 'oldest profession'.[181] Such beliefs are based on the stereotyped view of men's sex drive as unrelenting and the role of some women, the 'whores', to relieve men sexually. Such beliefs are also related to stereotyped ideas about the roles of different women, and the need for the 'whore' to protect and preserve her counterpart, the 'good' woman (e.g. the wives/girlfriends/daughters) from being unwittingly subjected to men's sex drive.[182] These types of beliefs and the dismissive attitude of 'boys will be boys' have been reported on some peacekeeping operations.[183]

Furthermore, General Recommendation No 19 states that article 5 is to include 'the propagation of pornography and… other commercial exploitation of women as sexual objects.'[184] The General Recommendation states that these acts constitute a part of the

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[179] See, eg, Carole Pateman, *The Sexual Contract* (Polity Press, 2003); Kate Millett, *Sexual Politics* (Abacus, 1972).

[180] See, eg, Millet, above n 180.

[181] The common belief that prostitution is the 'oldest profession' or is an inevitable part of human societies has been disproven by anthropological and historical research. It has found that prostitution 'is hardly an essential feature of all societies in all historical eras' (Timothy J Gilfoyle, 'Prostitutes in History: From Parables of Pornography to Metaphors of Modernity' (1999) 104(1) *The American Historical Review* 117, 119). Instead, prostitution is a product of specific societies and is related to its beliefs on sex, sexuality, gender, religion, power, economics, and social organisation. For example, Aboriginal Australian society before colonisation did not have any practices resembling prostitution despite the existence of a barter system and ritual exchanges of women between different Aboriginal groups. See Raelene Frances, 'The History of Female Prostitution in Australia' in Roberta Perkins, Garrett Prestage, Rachel Sharp and Frances Lovejoy (eds), *Sex Work and Sex Workers in Australia* (University of New South Wales Press, 1994) 27; Nancy M Williams and Lesley Jolly 'From Time Immemorial? Gender Relations in Aboriginal Societies before "White Contact" in Kay Saunders and Raymond Evans (eds), *Gender Relations in Australia: Domination and Negotiation* (Harcourt, Brace & Jovanovich, 1992) 9).

[182] See, eg, Kirby R Cundiff, 'Prostitution and Sex Crimes' (Working Paper No 50, The Independent Institute, 8 April 2004).

[183] Sarah Martin, 'Must Boys be Boys?: Ending Sexual Exploitation & Abuse in UN Peacekeeping Missions' (Refugees International, 2005) 4. See, also, eg, Mario Salazar, *Soldiers and Prostitution, What a Shock* (27 April 2012) Washington Times <http://communities.washingtontimes.com/neighborhood/21st-century-pacifist/2012/apr/27/soldiers-and-prostitution-what-shock/>. Last Accessed: 12 August 2014.; Catherine Hill, 'Planning for Prostitution: An Analysis of Thailand's Sex Industry' in Meredeth Turshen and Briavel Holcomb (eds), *Women's Lives and Public Policy: The International Experience* (Praeger Publishers, 1993) 133, 135.

[184] *General Recommendation No 19*, above n 162, [12].

'traditional attitudes by which women are regarded as subordinate to men'[185] and that commercial sexual exploitation 'contributes to gender-based violence.'[186]

Women's right to health and family planning, which is enshrined in article 12, may also be violated by acts of SEA. The CEDAW Committee's General Recommendation No 24 on 'Women and Health' recognises that '[a]s a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices.'[187] Such unequal power relations may be created or intensified during situations of armed conflict, insecurity, displacement, or the deprivation of essentials such as food and shelter, which may be the circumstances under which acts of SEA by peacekeeping personnel are perpetrated. The General Recommendation recognises that these unequal power relations and the inability to refuse sexual relations expose women and girls to an increased risk of contracting HIV/AIDS and other sexually transmitted diseases, which violates women's right to health and family planning.[188]

Lastly, article 11 may also be applicable to the issue of SEA. Article 11 calls for the elimination of discrimination against women in the field of employment, the right of women to have the same employment opportunities as men, and for the protection of women including the 'safeguarding of the function of reproduction.'[189] It may be argued that the obligation on State parties to ensure that women have the same employment opportunities as men means that women will have equal access to different forms of supporting themselves and will not need to enter prostitution or other sexually exploitative relations for their survival. This form of inequality has been noted in several UN investigations which

[185] Ibid [11]-[12].
[186] Ibid [12].
[187] Committee on the Elimination of Discrimination Against Women, *General Recommendation No 24: Women and Health*, 20th sess, UN Doc A/54/38/Rev.1 (Chap 1) (1999) [18].
[188] Ibid [8] and [24].
[189] *CEDAW* art 11.

have found that, in communities affected by armed conflict, key positions of authority and employment opportunities have often been taken by men, and women and girls have been left to struggle for their survival.[190] These investigations have found that women and children were often driven out of hunger to make contact with UN peacekeeping personnel, at which point the risk of sexual exploitation arises and the offer of, for example, food in exchange for sexual favours becomes difficult to refuse.[191] Furthermore, it may be argued that acts of SEA violate the 'safeguarding of the function of reproduction' which is also guaranteed under article 11.[192] Inherent in acts of forcible intercourse, prostitution, or sexually exploitative relations is the risk of HIV/AIDS, other sexually transmitted diseases, physical damage, and unwanted pregnancy, all of which violate women's right to safeguard their reproductive function.

Analysis and Conclusion

Although CEDAW may not expressly prohibit sexual violence and violence against women, these acts have been unequivocally accepted as forms of discrimination against women and as violations of CEDAW. Hence, the range of acts that may constitute 'sexual abuse' in the 2003 Bulletin are prohibited under CEDAW.

The range of acts that may constitute 'sexual exploitation' in the 2003 Bulletin, however, are not entirely prohibited under CEDAW. Although CEDAW does expressly address the sexual exploitation of women, the scope of the 'exploitation of prostitution of women' is unclear. The work of the CEDAW Committee has demonstrated support for State party efforts to

[190] See, eg, *Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa,* UN GAOR, 57th sess, Agenda Item 122, UN Doc A/57/465 (11 October 2002); *Investigation by the Office of Internal Oversight Services into Allegations of Sexual Exploitation and Abuse in the United Nations Organization Mission in the Democratic Republic of the Congo*, UN GAOR, 59th sess, Agenda Items 114, 118 and 127, UN Doc A/59/661 (5 January 2005).
[191] Ibid.
[192] *CEDAW* art 11(1)(f).

enable women to exit the sex industry and to reduce male demand for prostitution. This is well aligned with the UN's approach to sexual exploitation in the 2003 Bulletin in which peacekeeping personnel are prohibited from increasing the demand for prostituted women in the countries in which they have been deployed. Nonetheless, CEDAW does not expressly prohibit prostitution use and, at this stage, it cannot be said that prostitution *per se* is a violation of international human rights law. Hence, this is different to the 2003 Bulletin which expressly prohibits all forms of prostitution use. Thus, the prohibitions for UN peacekeeping personnel go further than the prohibitions that may be found in CEDAW.

Nonetheless, the nature of CEDAW as a broad and wide-ranging human rights instrument means that many provisions within CEDAW may potentially apply to the issue of SEA. In fact, CEDAW has the potential to cover not only the act of exploitation or abuse itself, but also the issues that have led to the act of SEA and the consequences that may flow from the act of SEA, such as through the right to health, employment, or freedom from gender stereotyped roles.

To conclude, the broad scope of CEDAW allows the Convention to apply to a wider range of SEA than compared to IHL, ICL, and the international law on human trafficking. Within CEDAW, it is possible to find prohibitions against all acts of sexual abuse, many acts of sexual exploitation, and the circumstances that may lead to or follow from an act of SEA. Hence, it may be argued that through the framework of CEDAW, many of the acts of SEA by peacekeeping personnel may be both a violation of the 2003 Bulletin and a violation of international law.

3.4.2 Convention on the Rights of the Child

International human rights law also provides an extensive and comprehensive legal framework for the protection of children from acts of SEA.[193] This legal framework is comprised of the *Convention on the Rights of the Child* (CRC), the *Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (OP CRC) and the ILO's *C182 Worst Forms of Child Labour Convention* (ILO Convention).[194]

The CRC is the first international human rights treaty to expressly prohibit acts of SEA against children. The CRC is a broad treaty on children's human rights and includes the protection of children from economic exploitation, sexual exploitation and sexual abuse,[195] and the prevention of the sale or traffic of children.[196] For the purposes of the Convention, the term 'child' refers to a person under the age of eighteen. Article 34 sets out the obligations on State parties for the protection of children from 'sexual exploitation and sexual abuse' which includes taking measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.[197]

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[193] Lin Lean Lim, *Whither the Sex Sector? Some Policy Considerations, The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia* (International Labour Office, 1998) 215.
[194] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)('*CRC*'); *Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2001)('*OP CRC*'); *C182 Worst Forms of Child Labour Convention*, opened for signature 17 July 1999, C182 (entered into force 19 November 2000)('*ILO Convention*').
[195] *CRC* art 32 and 34.
[196] Ibid art 35.
[197] Ibid art 34.

The terms 'exploitation' and 'sexual exploitation' are not expressly defined in the CRC.[198] The term 'exploitation' (sexual or otherwise) has been interpreted to imply 'a negative situation whereby another person profiteers from the child – with negative impact' and predominately, but not exclusively, refers to situations involving commercialisation.[199] Following the adoption of the CRC, the *Stockholm Declaration and Agenda for Action against Commercial Sexual Exploitation of Children* clarified that the 'commercial sexual exploitation of children' involved 'sexual abuse by the adult and remuneration in cash or in kind to the child or a third person or persons.'[200] Hence, the 'commercial sexual exploitation of children' involves an act of sexual abuse, instigated by an adult, which results in the remuneration (of the adult, child, or third person) in the form of money or of something else of value; in short, it is the sexual abuse of a child for profit.[201] Whilst this definition is specific to *commercial* sexual exploitation, other forms of non-commercial child sexual exploitation (e.g. family-linked exploitation such as 'bride price') may also be included within the broader term of 'sexual exploitation' used within the CRC.[202]

The CRC is absolute in its prohibition of all instances of the sexual exploitation of children. Furthermore, the consent of the child is irrelevant. This means that the consent of a child to an act of sexual exploitation, such as prostitution or pornography, does not change the prohibited nature of the act.[203]

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[198] André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans and Mieke Verheyde, *Commentary on the United Nations Convention on the Rights of the Child. Article 34: Sexual Exploitation and Sexual Abuse of Children* (Koninklijke Brill, 2007) 2.
[199] Ibid 25.
[200] *The Stockholm Declaration and Agenda for Action* (31 August 1996) First World Congress Against Commercial Sexual Exploitation of Children <http://www.unicef.org/lac/spbarbados/Planning/Global/Child%20protection/The%20Stockholm%20Declaration%20and%20Agenda%20for%20Action_1996.doc> [5]. Last Accessed: 12 August 2014.
[201] Alen, above n 198, 2.
[202] Ibid.
[203] Lim, above n 193, 216.

In a similar manner, the terms 'abuse' and 'sexual abuse' have not been defined exhaustively in the CRC.[204] The term 'sexual abuse' has been interpreted to mean 'some form of sexual violence committed against the child.'[205] The term 'sexual abuse' is broader than the term 'sexual exploitation' as 'it can cover situations where there is no remuneration in cash or in kind, e.g. rape, incest and sexual assault in non-commercial situations.'[206] As discussed above, sexual abuse is also an inherent component of all instances of the commercial sexual exploitation of children.

Following the adoption of the CRC, the OP CRC was developed to further define the obligations of State parties.[207] The OP CRC takes an explicit criminal justice approach.[208] Under article 3, State parties are obligated to criminalise, at minimum:

- the sale of children including the offering, delivering, or accepting by whatever means of a child for the purpose of sexual exploitation;
- the offering, obtaining, procuring, or providing of a child for child prostitution; and,
- the producing, distributing, disseminating, importing, exporting, offering, selling, or possessing of child pornography.[209]

In addition, the OP CRC calls on State parties to address the 'root causes such as poverty and underdevelopment' that contribute to the vulnerability of children to being sexually exploited.[210]

One final international legal instrument that addresses child SEA is the ILO Convention.[211] This instrument falls within international labour law but it contains strong provisions for

[204] Alen, above n 198, 2.
[205] Ibid.
[206] Ibid.
[207] *OP CRC*.
[208] Gallagher, above n 93, 67.
[209] *OP CRC* art 3(1).
[210] Ibid art 10.

the protection of children's human rights. The purpose of the ILO Convention is to eliminate the worst forms of child labour.[212] The 'worst forms of child labour' is defined as including 'the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.'[213] These terms, however, are not defined further. Amongst the obligations on State parties is the requirement to 'implement programmes of action to eliminate as a priority the worst forms of child labour'[214] and to adopt penal and other sanctions against the worst forms of child labour.[215]

Analysis and Conclusion

In sum, the international legal regime to protect, prevent, and punish acts of SEA against children is thorough and extensive. International human rights law prohibits all instances of SEA against children without exception and would unequivocally cover all acts of SEA against children included within the 2003 Bulletin. Hence, the prohibitions in international human rights law would cover all instances of child SEA perpetrated by UN peacekeeping personnel. Furthermore, the 'voluntary' acceptance of the child to engage in an act of SEA, such as agreeing to perform a sexual act in exchange for food or money,[216] is no excuse or justification for the act. Hence, all peacekeeping personnel who engage in such acts do so in clear violation of international law.

3.4.3 Other Human Rights Treaties

Whilst CEDAW and the CRC/OP CRC address the issue of SEA against women and children, respectively, a number of other human rights treaties may apply to the issue of SEA as well. These treaties include the *International Covenant on Civil and Political Rights* (ICCPR), the

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[211] *ILO Convention*.
[212] Ibid art 1.
[213] Ibid art 3.
[214] Ibid art 6(1).
[215] Ibid art 7(1).
[216] As discussed in Chapter Two.

International Covenant on Economic, Social and Cultural Rights (ICESCR), the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), and the *Convention on the Rights of Persons with Disabilities* (CRPD). Whilst these treaties do not expressly address *sexual* exploitation and abuse, the general provisions within these treaties may apply to acts of SEA if the act is also a violation of the human rights enshrined therein.

3.4.3.1 International Covenant on Civil and Political Rights

Several provisions within the ICCPR may be applicable to the issue of SEA. For example, an act of SEA may be a violation of article 7 which provides that '[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'[217] As discussed, the jurisprudence from international criminal tribunals has established that rape and sexual violence may constitute torture if the act fulfils the elements of torture.[218] According to General Comment 20 ('Prohibition of torture or cruel, inhuman or degrading treatment or punishment'), acts of torture or cruel, inhuman or degrading treatment are prohibited regardless of whether they are 'inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.'[219] In addition, the Human Rights Committee has stated in General Comment No 28 ('Equality of rights between men and women') that compliance with article 7 requires State parties to report on their laws and practices in regard to domestic violence, rape, female genital mutilation, and other forms of violence

[217] *International Covenant on Civil and Political Rights*, open for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 7.
[218] *Furundžija* (International Criminal Tribunal for the Former Yugoslavia, Case No IT-95-17/1-T, 16 July 1998).
[219] Human Rights Committee, *General Comment 20: Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment (Article 7),* 44th sess, UN Doc HRI/GEN/1/Rev.1 (1992) 30 [2].

against women.[220] Presumably, these acts may also constitute torture or cruel, inhuman or degrading treatment or punishment.

Furthermore, the Human Rights Committee has found that acts or omissions taken in response to sexual violence can constitute torture or cruel, inhuman or degrading treatment or punishment. For example, in *LNP v Argentina,* the Committee found that the acts and omissions of the medical staff, police officers, and the judiciary following the rape of the author by three men breached article 7 of the ICCPR.[221] These acts and omissions included not attending to the author at the police station and medical centre for many hours, subjecting the author to palpations in the injured parts of her body to verify that she was in pain, and discussing the author's lack of virginity in the court room.[222] The Human Rights Committee emphasised that the rights protected in article 7 'covers not only physical pain but also mental suffering' and found that the 'author was the victim of treatment of a nature that is a breach of article 7 of the Covenant.'[223]

Article 8 of the ICCPR may also apply to acts of SEA. Article 8 provides that no-one shall be held in slavery or servitude, or be required to perform forced or compulsory labour.[224] As discussed, the ICC EoC has provided the elements of sexual slavery as the causing of a person to engage in a sexual act under circumstances in which the perpetrator 'exercised any or all of the powers attaching to the right of ownership' over the person.[225] General Comment No 28 also provides that the obligations on State parties under article 8 include taking measures to eliminate trafficking, forced prostitution, and slavery disguised as

[220] Human Rights Committee, *General Comment 28: Equality of Rights between Men and Women (Article 3),* 68th sess, UN Doc CCPR/C/21/Rev.1/Add.10 (29 March 2000) [11] ('*General Comment 28*').
[221] Human Rights Committee, *Views: Communication No 1610/2007*, 102nd sess, UN Doc CCPR/C/102/D/1610/2007 (16 August 2011) [13.6] ('*LNP v Argentina*').
[222] Ibid [3.2].
[223] Ibid [13.6].
[224] *ICCPR* art 8(1), 8(2) and 8(3)(a).
[225] *Rome Statute* art 7(1)(g)-2.

domestic or other kinds of personal service.[226] Hence, if an act of SEA were to fulfil the elements of slavery, servitude, or forced or compulsory labour, then the act would be prohibited under article 8.

In addition, acts of SEA may be a violation of article 17 which provides that '[n]o one shall be subjected to arbitrary or unlawful interference with his privacy… nor to unlawful attacks on his honour and reputation.'[227] As discussed, Geneva Convention VI provides protection for women from any attacks on their 'honour' including rape, enforced prostitution, and any form of indecent assault.[228] In a similar manner, it may be argued that acts of SEA may also be an attack on men's 'honour'. Moreover, General Comment No 28 provides that the rights enshrined in article 17 include the protection of one's sexual life, including protection against rape.[229] General Comment No 16 ('The right to respect of privacy, family, home and correspondence, and protection of honour and reputation') provides that State parties have an obligation to protect against interferences from both State authorities and from natural or legal persons.[230] Hence, if an act of SEA also constitutes a violation of the right to privacy or an unlawful attack on one's honour, then it would be a breach of article 17.

Furthermore, the ICCPR provides for the protection of children under article 24 including the protections 'required by his [or her] status as a minor.'[231] This may, at times, require the adoption of protections that are greater than the protections that are accorded to adults,[232]

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[226] *General Comment 28*, above n 221, [12].
[227] *ICCPR* art 17.
[228] *Geneva Convention VI* art 27.
[229] *General Comment 28*, above n 221, [20].
[230] Human Rights Committee, *General Comment No 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 32nd sess, UN Doc HRI/GEN/1/Rev.1 (8 April 1988) 21 [1].
[231] *ICCPR* art 24.
[232] Human Rights Committee, *General Comment 17: Article 24*, 35th sess, UN Doc. HRI/GEN/1/Rev.1 (7 April 1989) 23, [2] ('*General Comment 17*').

including in regard to sexual and physical abuse.[233] General Comment No 17 on the 'Rights of the Child' provides that this may include protections to prevent violence, cruel and inhuman treatment, or exploitation, through acts of forced labour or prostitution.[234] These protections would, therefore, also include the prevention of sexual violence, sexual acts that are cruel or inhuman, and sexual exploitation. The Human Rights Committee has stated in a number of its Concluding Observations to State parties that its concerns include acts of SEA against children, such as child sex trafficking, child pornography, the prostitution of children including boys, and the sexual exploitation and sexual violence faced by street children.[235] Hence, acts of SEA against children may also be a violation of article 24.

Lastly, article 26 provides prohibitions against 'discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'[236] An act of SEA may be perpetrated on discriminatory grounds if the victim was chosen because she or he possessed a differentiating feature, such as a particular race, sex, religion, or other status. This may be the case, for example, during conflicts between different ethnic or religious groups. This may also be the case in many other circumstances in which SEA may occur, such as if the perpetrator had sought a *female* victim, or a *young* victim, or if a sexually abusive act was committed against someone because he was a *gay* man. However, to prove that a person has been a victim of systemic discrimination can be difficult.[237] The causes and consequences of systemic discrimination

[233] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 2014), 717.
[234] *General Comment 17*, above n 232, [3].
[235] Compiled by Joseph and Castan, above n 233, 717. See Human Rights Committee, *Concluding Observations of the Human Rights Committee: Sri Lanka*, 54th sess, UN Doc CCPR/C/79/Add.99 (27 July 1995); Human Rights Committee, *Concluding Observations of the Human Rights Committee: Japan*, 64th sess, UN Doc CCPR/C/79/Add.102 (19 November 1998); Human Rights Committee, *Concluding Observations of the Human Rights Committee: Belgium*, 64th sess, UN Doc CCPR/C/79/Add.99 (19 November 1998); Human Rights Committee, *Concluding Observations of the Human Rights Committee: Mexico*, 66th sess, UN Doc CCPR/C/79/Add.109 (27 July 1999).
[236] *ICCPR* art 26.
[237] Joseph and Castan, above n 233, 818.

are complex and may not be easily or directly determined.[238] Nonetheless, if the act of SEA was perpetrated on discriminatory grounds, then it may also be a violation of article 26 of the ICCPR.

In sum, the ICCPR is a core human rights treaty which enshrines human rights protections for all, including men, women and children. However, it does not expressly prohibit acts of SEA. Instead, the ICCPR prohibits acts of SEA to the extent that the act is also a violation of one or more of the broader rights enshrined within the Covenant. This is different to CEDAW and the CRC/OP CRC which contain express provisions prohibiting certain acts of SEA and, thereby, enable a more straight forward argument to be made about the illegality of these acts under these treaties. Nonetheless, the benefit of the general nature of the ICCPR is that the rights enshrined within the Covenant apply equally to men, women and children, and, therefore, the protections against SEA under the ICCPR also apply equally to all.

3.4.4.2 International Covenant on Economic, Social and Cultural Rights

Another core human rights treaty worthy of consideration is the ICESCR. Certain provisions within ICESCR may apply to acts of SEA, such as article 12 which enshrines the right to the 'enjoyment of the highest attainable standard of physical and mental health.'[239] It may be argued that acts of SEA, which may involve violence, physical damage, and emotional suffering, will necessarily impede the victim's ability to attain the highest standard of physical and mental health. This is most obvious in cases such as rape and child sex offences which inflict physical and emotional pain and suffering. However, this may also be the case in situations such as survival prostitution in which repeated acts of sexual intercourse may

[238] Ibid.
[239] *International Covenant on Economic, Social and Cultural Rights*, open for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976) art 12 ('*ICESCR*').

result in physical damage to the person's body, such as vaginal or anal tearing, bruising, or exposure to HIV/AIDS and other sexually transmitted infections (STIs), or may cause psychological trauma, such as depression, dissociation, unwanted flashbacks or other symptoms akin to post-traumatic stress disorder which have been reported among prostitution survivors.[240]

Violations of the rights within ICESCR may also precede the occurrence of, and increase susceptibility to, acts of SEA. For example, violations of the right to an adequate standard of living (article 11), the right to freely choose one's work (article 6), and the right to an education (article 13), may limit the choices available to an individual and may lead to situations of SEA.[241] Furthermore, acts of SEA may further entrench these violations of ICESCR. For example, girl victims who become pregnant from an act of SEA may suffer from deepening poverty due to the increased strain on their financial resources, which may further entrench, for example, violations of the right to food (article 11).

Similar to the ICCPR, the protections enshrined in ICESCR apply to all persons. Men, women and children all have the right to the highest attainable standard of health, an adequate standard of living, the right to freely choose one's work, and the right to an education. Hence, all persons are protected against acts of SEA that also violate the rights enshrined within ICESCR.

3.4.4.3 Additional Human Rights Treaties

A number of other human rights treaties may be applicable if the act of SEA is perpetrated under particular circumstances. For example, if an act of SEA also constitutes torture, then

[240] See, eg, Melissa Farley (ed) *Prostitution, Trafficking and Traumatic Stress* (Haworth Press Inc, 2003); Roberto J Valera, Robin G Sawyer and Glenn R Schiraldi, 'Violence and Post-Traumatic Stress Disorder in a Sample of Inner City Street Prostitutes' (2000) 16(3) *America Journal of Health Studies* 149.
[241] *ICESCR* art 6, 11 and 13.

the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) will apply.[242] Torture is defined in the CAT as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person' for some purpose, such as intimidation or discrimination.[243] Acts of rape and sexual violence may involve the intentional infliction of severe physical and mental suffering for the purpose of discrimination or intimidation. Less jurisprudence exists on the elements of cruel, degrading or inhuman treatment. However, if inherently violent acts such as rape and sexual violence may constitute torture, then it may be argued that 'lesser' forms of SEA, such as prostitution that is not physically violent but which involves verbal or psychological degradation, may fall within the lesser threshold of degrading or inhuman treatment.

This has been affirmed by the Committee against Torture (CAT Committee) which has made the finding on several occasions that acts of sexual violence and rape may constitute torture. For example, in *VL v Switzerland,*[244] a matter which involved the rape of the author by the police in Belarus and her asylum claim in Switzerland, the CAT Committee held that the multiple acts of rape suffered by the author 'surely constitute infliction of severe pain and suffering perpetrated for a number of impermissible purposes, including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender. Therefore, the Committee believes that the sexual abuse by the police in this case constitutes torture.'[245] Consequently, the CAT Committee found that return of the author to Belarus would be a violation of article 3 which provides the right to not be forcibly returned to a State in which there are substantial grounds for believing that a person may be subject

[242] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, open for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('*CAT*'). As discussed, the relevant provisions within ICL and article 7 of the ICCPR would also apply.
[243] Ibid art 1.
[244] Committee against Torture, *Communication No 262/2005*, UN Doc CAT/C/37/D/262/2005 (22 January 2007) ('*VL v Switzerland*').
[245] Ibid [8.10].

to torture.[246] Similarly, in *Njamba and Balikosa v Sweden*,[247] the CAT Committee found that the return of the authors to the Democratic Republic of Congo, where the authors might be subject to sexual violence, would a breach of article 3.[248]

If an act of SEA involves racial discrimination, then the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) may apply. Article 1 of CERD defines 'racial discrimination' as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise… of human rights and fundamental freedoms.'[249] This includes the right to security of person and protection against violence or bodily harm inflicted on the grounds of racial discrimination, whether by State or non-State actors.[250] Therefore, acts of SEA which involve a component of racial discrimination, such as acts where the victim was chosen based in part or whole on her or his racial or ethnic background, are prohibited under CERD.

Similarly, if an act of SEA is committed against a person with a disability, then the *Convention on the Rights of Persons with Disabilities* (CRPD) may apply.[251] For the purposes of the CRPD, persons with disabilities include 'those who have long-term physical, mental, intellectual or sensory impairments.'[252] Article 16 expressly provides that persons with disabilities are to be protected from 'all forms of exploitation, violence and abuse.'[253] Hence, this would include sexual exploitation, sexual violence, and sexual abuse. Article 15 also

[246] Ibid [8.11] and [9].
[247] Committee against Torture, *Communication No 322/2007*, 44th sess, UN Doc CAT/C/44/D/322/2007 (3 June 2010) ('*Njamba and Balikosa v Sweden*').
[248] Ibid [10]. For more information, see Joseph and Castan, above n 233, 246-249.
[249] *International Convention on the Elimination of All Forms of Racial Discrimination*, open for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 1.
[250] Ibid art 5.
[251] *Convention on the Rights of Persons with Disabilities*, open for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008).
[252] Ibid art 1.
[253] Ibid art 16.

provides special protection for persons with disabilities during armed conflict, humanitarian emergencies, or other situations of risk.[254] Therefore, this would cover many of the circumstances into which UN peacekeeping forces are deployed.

In addition, the CRPD contains many provisions that are similar to the protections enshrined in the other human rights treaties that have already been discussed. For example, persons with disabilities have the right to: freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15); respect for one's physical and mental integrity (article 17); freedom from arbitrary or unlawful interference with one's privacy and unlawful attacks on one's honour (article 22); the enjoyment of the highest attainable standard of health (article 25); the opportunity to freely chose or accept one's work (article 27); and an adequate standard of living (article 28). Therefore, acts of SEA against persons with disabilities are be prohibited under the CRPD to the extent that they are a violation of the rights enshrined within the Convention.

3.5 Conclusion

In this chapter, several areas of international law have been examined to determine the extent to which acts of SEA, as defined in the 2003 Bulletin, are legally prohibited. The analysis in this chapter has demonstrated that international law has developed significantly in the past few decades to prohibit many aspects of SEA. This has included: the extensive enumeration of sexual violence crimes in international criminal law, including the development of a broad and encompassing definition of rape; the establishment of a comprehensive regime to combat human trafficking, including trafficking for the purpose of sexual exploitation; and the prohibition of acts of SEA perpetrated against women and children under CEDAW and the CRC/OP CRC, respectively, and against all persons to the

[254] Ibid art 15.

extent that the act of SEA is a violation of the broader rights enshrined in the ICCPR, ICESCR, CAT, CERD and CRPD.

In addition, international law has provided guidance for the interpretation of the key concepts in the 2003 Bulletin. For example, international criminal law has been useful for understanding the concept of 'sexual abuse', including the definition and scope of 'physical intrusion' and 'coercive conditions.' The international law on human trafficking has provided guidance on the concept of 'sexual exploitation', including the 'abuse of a position of vulnerability'. However, for an act of SEA to be prohibited under these areas of international law, the act needs to also fulfil the elements of a crime against humanity/war crime/genocide or trafficking in persons, respectively. This would not be the case for many of the acts of SEA perpetrated by UN peacekeeping personnel.

International human rights law, on the other hand, is much broader in its scope and application. Hence, it may be able to 'capture' many of the acts of SEA that do not fall within IHL, ICL, and the international law on human trafficking. In particular, the wide-ranging rights enshrined for women in CEDAW and the comprehensive legal regime on children's human rights under the CRC and OP CRC would cover most acts of SEA. Other core human rights treaties, such as the ICCPR and ICESCR, also prohibit SEA against all persons to the extent that those acts violate the broader rights enshrined within these treaties. Lastly, prohibitions against SEA may also be found in treaties that protect the human rights of specific vulnerable groups, such as the CRPD and CERD.

Nonetheless, not every act of SEA included within the 2003 Bulletin is clearly prohibited under international law. Despite the claim in the 2003 Bulletin that the prohibited acts

'violate universally recognized international legal norms and standards,'[255] the prohibitions promulgated within the Bulletin extend further than the prohibitions that may be found in international law.[256] One example is the prohibition of prostitution use.[257] As discussed, prostitution *per se* is not expressly prohibited under international law. In addition, the 2003 Bulletin 'strongly discourages' sexual relationships between UN personnel and beneficiaries of assistance because of the inherently unequal power dynamics involved.[258] Again, no such discouragement exists in international law.

As the aim of this thesis is to establish the legal accountability of the UN, this thesis will examine the UN's legal accountability for those acts of SEA that are also violations of international law. Legal accountability simply cannot be established for acts that are not against the law. Nonetheless, this is not to discount the strength or determination of the UN to eliminate every possible form of SEA from its peacekeeping operations. The UN has the authority and the ability to set the standards of conduct which it deems to be acceptable for its personnel. Banning transactional sex and discouraging sexual relationships based on unequal power dynamics may be strong measures. However, they also send a strong message about the care and consideration that the UN expects from its personnel in the conduct of their sexual activities whilst on mission. Hence, this thesis will proceed with the understanding that most, but not all, acts of SEA by UN peacekeeping personnel may be a violation of human rights and that these acts are, therefore, prohibited under international law.

[255] *2003 Bulletin*, above n 1, art 3.1.
[256] Machiko Kanetake, 'Whose Zero Tolerance Counts? Reassessing a Zero Tolerance Policy against Sexual Exploitation and Abuse by UN Peacekeeping' (2010) 17(2) *International Peacekeeping* 200, 201.
[257] For example, in early 2007, the Conduct and Discipline Team launched the 'Campaign to End Transactional Sex/Prostitution.' For more information, see Jennings, above n 143, 16.
[258] *2003 Bulletin*, above n 1, art 3.2(d).

CHAPTER 4

The Responsibilities of International Organisations

The expanding scope and size of international organisations has raised many concerns about their regulation under international law.[1] International organisations, such as the United Nations (UN), have progressively taken on functions that have traditionally fallen within the domain of States, such as the administration of territory and the deployment of military forces. By taking on these responsibilities, however, international organisations have also taken on the possibility of failing in these responsibilities. This has been vividly demonstrated by the UN's failure to prevent acts of sexual exploitation and abuse (SEA) on its peacekeeping operations. However, the question remains: what responsibilities do international organisations actually have under international law?

In this chapter, the legal responsibilities of international organisations will be discussed. First, the position of the UN as an international legal actor will be examined, including its legal rights and responsibilities. Then, the international law on the responsibility of international organisations will be explored. In particular, the *Articles on the Responsibility of International Organizations* (ARIO) will be discussed. These discussions will include a consideration of if and how the ARIO may be applied to the case of SEA on peacekeeping operations. Hence, this chapter will provide a critical analysis of the current legal regime on the responsibilities of international organisations and whether this regime is sufficient to ensure the accountability of the UN for acts of SEA on its peacekeeping operations.[2]

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[1] Marten Zwanenburg, *Accountability of Peace Support Operations* (Martin Nijhoff Publishers, 2005) 81.

[2] As concluded in Chapter Three, this thesis will consider those acts of SEA which are also violations of international law. This would include most, but not necessarily all, of the acts prohibited in the 2003 Bulletin. As noted in Chapters One and Three, an international organisation cannot be held legally accountable for an act if the act is not a violation of the law. See Kofi A Annan, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003) ('*2003 Bulletin*').

4.1 The United Nations: An International Legal Person

It is widely accepted that the UN possesses international legal personality. The international legal personality of an international organisation has been described as the 'possess[ion of] rights, duties, powers and liabilities distinct from its members or its creators on the international plane and in international law.'[3] The international legal personality of the UN was affirmed in the 1949 Advisory Opinion (*Reparation* case) of the International Court of Justice (ICJ). In this matter, the Court considered whether the UN had the legal capacity to bring an international claim on behalf of its staff members against a non-Member State. In reaching its verdict, the Court needed to first determine whether the UN possessed international legal personality. The Court considered the powers given to the Organisation, both in the Charter and in practice,[4] and found that 'to achieve these ends the attribution of international personality is indispensable.'[5] After establishing the international legal personality of the UN, the Court unanimously held that the UN did have the capacity to bring an international claim against a State in order to obtain reparation for damages caused to the Organisation and/or to its agents.[6] In addition, the Court found that this capacity included the ability to bring an international claim against both Member States and non-Member States.[7] Hence, the UN was ascribed with an objective personality that was opposable to all States.[8] This meant that the UN's international legal personality was an 'objective' aspect of international law to be recognised by all States, regardless of their

[3] Sanna Kyllönen, 'The Legal Framework For The Responsibility Of International Organizations' (2010) 1 *Nordic Journal of Commercial Law* 1, 5.
[4] The powers and activities of the UN considered by the Court included: the creations of organs within the UN that have been given special tasks to accomplish; the ability of the UN to carry out decisions by the Security Council; the provision of legal capacities, privileges, and immunities to the UN; the ability of the UN to conclude agreements between the organisation and its Members; the occupation of a position detached from its Members States and the duty of the UN to remind its Member States of their obligations; and the task of the UN to maintain international peace and security. See *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174, 8-9 ('*Reparations*').
[5] Ibid 8.
[6] Ibid 13-14.
[7] Ibid 17.
[8] Ibid 15.

membership to the UN, and was not to be left to the 'subjective' opinion of a particular State as to whether or not it would recognise the UN as an international legal person.[9]

Although the Court attributed a 'large measure' of legal personality to the UN,[10] it cautioned that this did not mean that the UN was equivalent to a State or had the same legal rights and duties as a State.[11] Instead, the Court determined that the UN had international legal personality insofar as this was connected to the performance of its 'purposes and functions as specified or implied in its constituent documents and developed in practice.'[12] The Court's reference to the Organisation's 'implied' functions has created some controversy over the exact scope of its functions and, hence, the extent of the Organisation's legal personality.[13] It has been noted, however, that the recognition of its implied functions did 'mean… that the organization is conceived as a dynamic institution [that is capable of] evolving to meet changing needs and circumstances.'[14] Hence, the scope of the international legal personality attributed to the UN has the ability to grow and evolve as the Organisation itself grows and evolves in its international roles and duties.

4.2 The United Nations: Rights and Responsibilities

The attribution of international legal personality to the UN has general legal consequences for the Organisation. Three consequences of the attribution of legal personality to international organisations have been identified by Professor Gerhard Hafner.[15] The first is that the organisation becomes a legal subject and, thereby, becomes 'capable of acting

[9] Finn Seyersted, *Common Law of International Organizations* (Martinus Nijhoff Publishers, 2008) 63.
[10] *Reparations* [1949] ICJ Rep 174, 9.
[11] Ibid 9.
[12] Ibid 10.
[13] James E Hickey Jr, 'The Source of International Legal Personality in the 21st Century' (1997) 2 *Hofstra Law and Policy Symposium* 1.
[14] Derek William Bowett, *The Law of International Institutions* (London Institute for World Affairs, Stevens and Sons, 1982) 338.
[15] Gerhard Hafner, 'The Legal Personality of International Organizations: The Political Context of International Law' in August Reinisch and Ursula Kriebaum (eds), *The Law of International Relations – Liber Amicorum Hanspeter Neuhold* (Eleven International Publishers, 2007) 81.

within the field of international law and of producing legal effects within this legal order.'[16] The second consequence is that the organisation may become the subject of legal attribution within international law as the organisation's legal personality means that there are now acts that may be attributed to the organisation that are separate to the acts undertaken by its member states.[17] The third consequence is that the organisation itself now needs to assume international responsibility for its own acts.[18] Therefore, Hafner concluded that '[a]ttributability and responsibility are the necessary consequence of the power to produce, by their own acts, legal effects separable of the effects of acts of the members.'[19]

It may seem intuitive that the UN's status as a legal subject means that it is: (a) able to produce its own legal effects; (b) able to have the legal effects of its own actions attributed to it; and (c) may be held legally responsible for those attributed acts. However, there is currently no treaty law and little case law to support this contention.[20] The principal case law continues to be the *Reparation* case. As discussed, in this case it was determined that one of the 'legal effects' of the UN's international personality was the competency to bring an international claim for damages caused to the Organisation and its agents.[21] In the ICJ's Advisory Opinion, the examples that were given of this competency included the capacity to establish, present, and settle claims through methods such as protest, request for an

[16] Ibid 85.
[17] Ibid 85-86.
[18] Ibid 86.
[19] Ibid.
[20] The *Articles on the Responsibility of International Organizations* provides several reasons for this: 'The main reason for this is that practice concerning responsibility of international organizations has developed only over a relatively recent period. One further reason is the limited use of procedures for third-party settlement of disputes to which international organizations are parties. Moreover, relevant practice resulting from exchanges of correspondence may not be always easy to locate, nor are international organizations or States often willing to disclose it.' See *Articles on the Responsibilities of International Organizations*, UN GAOR, 63rd sess, UN Doc A/CN.4/L.778 (30 May 2011) [5] ('*ARIO*').
[21] *Reparations* [1949] ICJ Rep 174.

enquiry, negotiation, and request for submission to an arbitral tribunal or to the Court.[22] However, the accompanying duties that may flow from the UN's legal personality were not expressly addressed by the ICJ.[23]

Since the *Reparation* case, the principle that the UN is able to bring an international claim has become widely accepted.[24] However, the reverse proposition, that is, the ability of other legal actors to bring an international claim against the UN, has been much more difficult to establish.[25] This imbalance has been described as a 'rights-bias in the approach to the legal personality of international institutions' in which the establishment of international legal personality has become associated with the legal rights of the organisation, whilst the legal obligations arising from having legal personality have been 'almost completely ignored.'[26] It has been argued that this overemphasis on rights rather than obligations conflicts with the fundamental purpose for the development of international legal personality which was 'to limit the arbitrary use of power [and] to confirm and capture in a legal notion the ruler's subjection to the law of nations.'[27]

Therefore, at least in principle, international organisations should have both legal rights and legal responsibilities.[28] In the case of the UN, it seems counter-intuitive and unjust that

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[22] Ibid 7.
[23] Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge, 2011) 65. Two further ICJ Advisory Opinions have implied that international organisations have obligations flowing from their international legal personality. These are:
- *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal (Advisory Opinion)* [1953] ICJ Rep 47.
- *Interpretation of the Agreement of March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73 ('*Interpretation of Agreement*').
For more information, see Verdirame, 70-71.
[24] Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions* (Thomas Reuters (Legal) Ltd, 2009) 517-518.
[25] Ibid 518.
[26] Verdirame, above n 23, 72-73.
[27] Ibid 73. Verdirame quotes JE Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (The Hague: TMC Asser Press, 2004) 78.
[28] Sands and Klein, above n 24, 518.

the Organisation may have the competence to bring international claims against legal persons for damages that it has suffered, but that other legal persons may not bring international claims against the UN for damages that it has caused. Although the UN may be 'exceptional' compared to other international organisations in regard to its political significance and near universal membership,[29] this does not mean that the Organisation should be granted an 'exception from' assuming legal responsibility for its actions. In fact, it has been argued that it would 'be extremely disruptive for the international system to tolerate the presence of actors that are endowed with legal personality… but [who] are exempt from a body of universally or almost universally accepted rules.'[30]

4.3 Sources of Law for the Responsibilities of International Organisations

The legal responsibility of international organisations may arise from a number of different sources of law. This includes 'internal law', which are the rules of the organisation, and 'external law', which consists of international, regional, and domestic law. Legal responsibilities may also arise from private law obligations, such as through entering into contractual agreements. The exact content and scope of these legal obligations, however, continues to be an area of controversy and debate.

The starting point for discussing the responsibilities of international organisations is often the 'internal law' of the organisation.[31] The *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations* defines the 'rules of the organization' as 'the constituent instruments, [the] decisions and resolutions adopted in accordance with them,' and the 'established practice of the

[29] The ICJ refers to the UN as the 'supreme' international organisation in *Reparations* [1949] ICJ Rep 174, 179.
[30] Verdirame, above n 23, 71.
[31] Ian Brownlie, 'The Responsibility of States for the Acts of International Organizations' in Maurizio Ragazzi (ed) *International Responsibility Today* (Loninklijke Brill, 2005) 355, 359; Kyllönen, above n 3, 3.

organization.'[32] For the UN, this consists of the UN Charter, which is its constituent treaty, and any decisions, resolutions, and issuances that have been made in accordance with the Charter. The level to which different resolutions and issuances are binding and on whom they are binding varies depending on the authority of the resolution or issuance. For example, resolutions adopted by the UN Security Council under its Chapter VII powers are binding on all Member States,[33] whereas article 97 empowers the Secretary-General as the 'chief administrative officer' to promulgate administrative issuances that are binding on all UN staff.[34] These issuances by the Secretary-General, such as the 2003 bulletin on *Special Measures for the Protection from Sexual Exploitation and Abuse*,[35] form part of the 'internal law' of the Organisation.

International organisations may also have legal responsibilities arising from 'external law' including domestic law and international law. The principle that international organisations are subject to the domestic law of the territory in which they are operating is widely accepted.[36] In regard to peacekeeping operations, this principle has been formally recognised in the Model Status-of-Forces Agreement (SOFA) which is a legally binding agreement signed between the UN and the host State to the operation.[37] The Model SOFA states that '[t]he United Nations peacekeeping operation and its members shall respect all local laws and regulations.'[38] Agreements for specific missions, such as the mission to

[32] *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,* opened for signature 21 March 1986, UN Doc A/CONF.129/15, art 2(1)(j).
[33] For further discussion on the legal effects of UN Security Council resolutions, see Marko Divac Öberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ' (2005) 16(5) *European Journal of International Law* 879.
[34] *Charter of the United Nations* art 97.
[35] *2003 Bulletin*, above n 2.
[36] See, eg, Sands and Klein, above n 24, 469.
[37] Bruce Oswald, Helen Durham and Adrian Bates, *Documents on the Law of UN Peace Operations* (Oxford University Press, 2010) 34.
[38] *Model Status-of-Forces Agreement for Peacekeeping Operations*, UN GAOR,45th sess, Agenda Item 76, UN Doc A/45/594 (9 October 1990) s IV, [6] ('*Model SOFA*').

Darfur (UNAMID SOFA), Haiti (MINUSTAH SOFA), and Sudan (UNMIS SOFA), contain similar provisions.[39]

Another source of 'external law' from which obligations for international organisations may arise is international law. This includes both treaty law and customary law. The most obvious sources of treaty law that are applicable to the UN are the treaties that are concluded about the Organisation (e.g. *Convention on the Privileges and Immunities of the United Nations* (General Convention)).[40] The applicability of other treaties to the UN, however, remains uncertain. The UN is not a State and, therefore, is unable to sign, ratify, or accede to treaties that are concluded between States and that do not provide for international organisations to become a party to the treaty. This is currently the case for the UN in regard to international human rights treaties and international humanitarian law treaties. Although a range of arguments have been put forth as to how, for example, human rights treaties may be binding upon the UN, there is yet to be consensus on this issue.[41]

Customary international law may also be applicable to international organisations. As international legal actors, it is logical that customary international law, which is binding on all international legal actors, is also binding on international organisations. This was affirmed in the ICJ's 1980 Advisory Opinion (*Interpretation of Agreement*) in which the Court held that '[i]nternational organizations are subjects of international law and, as such,

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[39] *Agreement between the United Nations and the African Union and Government of Sudan concerning the status of the African Union/United Nations Hybrid Operation in Darfur* (February 2008) <http://unamid.unmissions.org/Portals/UNAMID/UNAMID%20SOFA.pdf>. Last Accessed: 12 August 2014; *Agreement between the United Nations and the Government of Haiti concerning the status of the United Nations Operation in Haiti* (2004) <http://ijdh.org/wordpress/wp-content/uploads/2011/11/4-Status-of-Forces-Agreement-1.pdf>; *Agreement between the Government of Sudan and the United Nations Mission in Sudan* (2005) <http://unmis.unmissions.org/Portals/UNMIS/Documents/General/sofa.pdf>. Last Accessed: 12 August 2014.

[40] *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February 1946, 1 UNTS 15 and 90 UNTS 327 (entered into force 17 September 1946) ('*General Convention*').

[41] This is discussed in Chapter Five.

are bound by any obligations incumbent upon them under general rules of international law.'[42] Whilst the Advisory Opinion does not expressly refer to 'customary international law', the phrase 'general rules of international law' has been interpreted as 'being shorthand for customary international law of universal or quasi-universal applicability and for general principles of law.'[43] More recently, the International Criminal Tribunal for Rwanda (ICTR) held in *The Prosecutor v Rwamakuba* that 'the United Nations, as an international subject, is bound to respect rules of customary international law, including those rules which relate to the protection of fundamental human rights.'[44]

Lastly, legal responsibilities for international organisation may arise from its private law obligations, such as contractual agreements. This was affirmed in the aforementioned ICJ Advisory Opinion (*Interpretation of Agreement*) which recognised that obligations for an international organisation may arise from agreements to which it is a party.[45] In the case of the UN, its capacity to contract and its responsibility to settle disputes that arise from its contracts is also provided for in the General Convention.[46] This responsibility has been acknowledged in a memorandum issued by the UN Office of Legal Affairs which states that the UN will recognise the legal obligations and liabilities that arise for the Organisation from the legal contracts into which it has entered.[47]

Other liabilities of a private law character may also be applicable to the UN. The liability of the Organisation for tortious acts irrespective of a contractual link is evident in the adoption by the General Assembly of a resolution to limit the liability of the UN for tort claims arising

[42] *Interpretation of Agreement* [1980] ICJ Rep 73 [37].
[43] Verdirame, above n 23, 71.
[44] *The Prosecutor v Rwamakuba (Decision on Appropriate Remedy)* (International Criminal Tribunal for Rwanda, Trial Chamber III, Case No ICTR-98-44C-T, 31 January 2007) [48].
[45] *Interpretation of Agreement* [1980] ICJ Rep 73, 89-90.
[46] *General Convention* section 1(a) and 29.
[47] 'Memorandum to the Controller' [2001] *United Nations Juridical Yearbook* 381, [44].

from injuries to third parties in its Headquarters district.[48] The resolution limits the liability of 'any tort action or in respect of any tort claim by any person against the United Nations… [where] the United Nations may be required to indemnify such person… [for claims] arising out of any act or omission, whether accidental or otherwise, in the Headquarters district.'[49] The adoption by the General Assembly of a resolution to limit its liability for tortious acts implicitly acknowledges that the Organisation may indeed be liable for such acts.

A similar resolution has been adopted by the General Assembly to limit the liability of the UN in regard to its peacekeeping operations.[50] This General Assembly resolution was adopted following a report by the Secretary-General which outlined the peacekeeping-related activities for which the UN may be held liable, such as the non-consensual use and occupancy of premises, personal injury, and property loss or damage.[51] The resolution implements several temporal and financial limitations on the liability of the Organisation in relation to third-party claims against the Organisation.[52] The resolution also clarifies that this damage must be a result of or attributable to peacekeeping personnel in the performance of their official duties[53] and that the damages were not the result of activities undertaken due to 'operational necessity.'[54] Hence, similar to the resolution regarding the UN Headquarters, a resolution limiting the liability of the UN for its peacekeeping

[48] *Limitation of Damages in Respect of Acts Occurring within the Headquarters District*, UN GAOR, 101st plen mtg, UN Doc A/RES/41/210 (11 December 1986).
[49] Ibid [1].
[50] *Third-Party Liability: Temporal and Financial Limitations*, GA Res 52/247, UN GAOR, 52nd sess, Agenda Item 142(a), UN Doc A/RES/52/247 (17 July 1998) ('*Resolution 52/247*').
[51] However, the report clarifies that liability may only be engaged for operational activities which were under the exclusive command and control of the UN, and that the Organisation would be exempt from liability for property loss and damage that resulted from 'operational necessity'. See *Financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Peace Forces headquarters*, UN GAOR, 51st sess, UN Doc A/51/389 (20 September 1996) 4-6 ('*Financing the UN Peace Forces*').
[52] *Resolution 52/247*, UN Doc A/RES/52/247,[5].
[53] Ibid.
[54] Ibid [6].

operations implies that the Organisation may in fact be held liable for damage that is caused by its peacekeeping activities.

4.4 Codifying Responsibilities: The *Articles on the Responsibility of International Organizations*

The principles on the responsibility of international organisations have recently been compiled in the *Articles on the Responsibility of International Organizations* (ARIO). The final draft of the ARIO was adopted by the International Law Commission (ILC) in July 2011 and forms a part of its work to progressively develop and codify international law.[55] In December 2011, the ARIO was welcomed by the General Assembly and commended to States and to international courts and tribunals.[56] General Assembly Resolution 66/100, to which the ARIO has been annexed, also contains a provisional agenda item for the General Assembly to examine the form that might be given to the articles in its 2014 session.[57]

The Commentaries to the ARIO acknowledge the 'limited practice' in this area of law and that the ARIO represents more of a 'progressive development' rather than a 'codification' of international law.[58] Nonetheless, the ARIO proceeds to set out a fairly extensive set of legal responsibilities for international organisations based on the ILC's *Articles on the Responsibility of States for Internationally Wrongful Acts* (ARS).[59] Even though the ARS (and the ARIO) 'do not have the status of treaty law and are not binding on States,'[60] the ARS has been found by the International Criminal Tribunal for the former Yugoslavia (ICTY) to be

[55] *Statute of the International Law Commission* art 1.1.
[56] Gabrielle Simm, 'International Law as a Regulatory Framework for Sexual Crimes Committed by Peacekeepers' (2011) 16(3) *Journal of Conflict & Security Law* 473, 486.
[57] *Responsibility of International Organizations*, GA Res 66/100, UN GAOR, 6th Comm, 66th sess, Agenda Item 81, UN Doc A/RES/66/100 (9 December 2011) [4].
[58] *Draft Articles on the Responsibility of International Organizations, with Commentaries*, UN GAOR, 63rd sess (30 May 2011) ('*ARIO with Commentaries*') 3.
[59] *ARIO*.
[60] *ARIO with Commentaries*, above n 58, 30; *Prosecutor v Nikolić (Decision on defence motion challenging the exercise of jurisdiction by the Tribunal)* (International Criminal Tribunal for the former Yugoslavia, Trial Chamber II, Case No. IT-94-2-PT, 9 October 2002) [60].

useful 'as general legal guidance' and that it was acceptable to 'use the principles laid down in the Draft Articles insofar as they may be helpful for determining the issue at hand.'[61] Although the ARIO has received some criticism,[62] it nonetheless does constitutes the main source of codified principles on the responsibility of international organisations to date. The ARIO will now be examined and the usefulness of the ARIO for establishing the organisational responsibility of the UN for acts of SEA on peacekeeping operations will be discussed.

4.4.1 The Scope of the ARIO

The ARIO specifies the scope, definition, and elements of the responsibility of international organisations for internationally wrongful acts. Article 1 states that '[t]he present… articles apply to the international responsibility of an international organization for an internationally wrongful act.'[63] The ARIO is concerned only with responsibilities that arise from international law and not from the internal law of an organisation.[64] The ARIO also does not address responsibility for acts that are *not* prohibited by international law.[65] Therefore, the ARIO may be a useful for addressing the problem of SEA to the extent that SEA is a breach of international law.[66]

For the purposes of the ARIO, an 'international organisation' is defined as 'an organization established by a treaty or other instrument governed by international law and possessing

[61] Ibid.
[62] See, eg, Sienho Yee, '"Member Responsibility" and the ILC Articles on the Responsibility of International Organizations: Some Observations' in Maurizio Raggazi (ed), *Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie* (Martinus Nijhoff, 2013) 325; Niels M Blokker, 'Preparing Articles on Responsibility of International Organizations: Does the International Law Commission take International Organizations Seriously? A Mid-Term Review' (2011) *Research Handbook on the Law of International Organizations* 313.
[63] *ARIO* art 1.
[64] *ARIO with Commentaries*, above n 58, 3-4.
[65] Ibid 4.
[66] The extent to which acts of SEA as defined in the 2003 Bulletin are a breach of international law was discussed in Chapter Three.

its own international legal personality.'[67] In regard to the applicability of the ARIO to the UN, the Commentaries state that it was 'not intended to exclude… the United Nations.'[68] Hence, the Commentaries indirectly affirm that the UN may be held responsible for internationally wrongful acts under the ARIO.

Article 66 also states that the provisions within the ARIO are to be 'without prejudice to any question of the individual responsibility under international law.'[69] Hence, whilst the ARIO focuses on the responsibility of international organisations, individual responsibility may exist alongside organisational responsibility.[70] This means that for allegations of SEA, the liability and prosecution of individual perpetrators may exist parallel to and independently from the organisational responsibility of the UN.

4.4.2 The Elements of an Internationally Wrongful Act

The elements of an internationally wrongful act are set out in article 4 which provides that:

> There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:
>
> (a) is attributable to that organization under international law; and
>
> (b) constitutes a breach of an international obligation of that organization.

It is important to note that 'conduct' includes both actions and omissions. The inclusion of omissions has been supported by the Special Rapporteur on the Responsibility of International Organisations, Giorgio Gaja, who has stated that '[c]learly, omissions are wrongful when an international organization is required to take some positive action and fails to do so… It would in any event be strange to assume that international organizations

[67] *ARIO* art 2(a).
[68] *ARIO with Commentaries*, above n 58, 104.
[69] *ARIO* art 66.
[70] *ARIO with Commentaries*, above n 58, 14 and 104.

could not possess obligations to take positive actions.'[71] In his report, the Special Rapporteur refers to the failure of the UN to prevent genocide in Rwanda as an example of an omission.[72] Hence, the failure of an international organisation to take positive actions, such as to adequately prevent acts of SEA that are prohibited under international law, may amount to an omission that engages the responsibility of the organisation.

i) The First Element: Attribution

The first element in article 4 states that an internationally wrongful act requires the conduct to be attributable to the international organisation under international law. Article 6 provides that the conduct of both an 'organ' or an 'agent' may be 'considered an act of that organization under international law.'[73] The definition of 'organ' is 'any person or entity which has that status in accordance with the rules of the organization.'[74] Peacekeeping operations, which have the status of a subsidiary organ of the UN, would fall within this definition.[75] The definition of 'agent' is 'an official or other person or entity… who is charged by the organization with carrying out, or helping to carry out, one of its functions.'[76] The Commentaries state that this definition is based on the ICJ's Advisory Opinion in the *Reparation* case in which '[t]he Court understands the word "agent" in the most liberal sense, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the organization with carrying out, or helping to carry out, one of its functions – in short, any person through whom it acts.'[77] Hence, the definition of 'agent' within the ARIO is quite broad and would

[71] Giorgio Gaja, Special Rapporteur, *Third Report on the Responsibility of International Organisations*, UN Doc A/CN.4/553 (13 May 2005) [8]–[10].
[72] Ibid 4 [10].
[73] *ARIO* art 6.
[74] Ibid art 2(c).
[75] *Subsidiary Organs*, United Nations Security Council <http://www.un.org/en/sc/subsidiary>. Last Accessed: 12 August 2014.
[76] *ARIO* art 2(d).
[77] *Reparations* [1949] ICJ Rep 174, 177; *ARIO with Commentaries*, above n 58, 12.

certainly encompass the civilian component of UN peacekeeping operations, such as staff, volunteers, civilian police, and experts on mission, who are carrying out the functions of the organisation.

Pursuant to article 7, the conduct of an organ *of a State* that is *placed at the disposal of* an international organisation may also be attributed to the organisation 'if the organization exercises effective control over that conduct.'[78] This may be the case for the military forces of Member States that have been placed at the disposal of the UN for deployment on its peacekeeping operations. Since the organ in article 7 retains a link with another international legal person (i.e. the State), it is therefore necessary to establish the 'effective control' of the international organisation over the organ before the attribution of conduct can be made to the organisation instead of to the State.[79]

The determination of 'effective control' has been a controversial subject. This controversy has been evident in the recent jurisprudence of the European Court of Human Rights (ECtHR) and the findings that the Court has made on the attribution of the conduct of UN peacekeeping troops. In the joined cases of *Behrami and Behrami v France* and *Saramati v France, Germany and Norway*, the Court considered, respectively: (i) the matter of the death of Gadaf Behrami and the serious injury of Bekim Behrami due to the explosion of undetonated cluster bombs left over from the Kosovo War; and (ii) the legality of the detention of Ruzhdi Saramati by the Kosovo Force (KFOR). In this matter, the ECtHR found that it was possible to attribute the conduct of peacekeeping forces to the UN.[80] The ECtHR held that the conduct of the UN Interim Administration in Kosovo (UNMIK) and KFOR were attributable to the UN because the UN Security Council (UNSC) continued to retain 'ultimate

[78] *ARIO* art 7.
[79] Verdirame, above n 23, 102-103.
[80] *Behrami v France and Saramati v France, Germany and Norway* (European Court of Human Rights, Application Nos 71412/01 and 78166/01, 2 May 2007).

authority and control' over UNMIK and KFOR.[81] In regard to KFOR, the following factors demonstrated that authority and control remained with the UNSC: Chapter VII of the Charter allowed the UNSC to delegate its security powers to KFOR, which it did through the adoption of UNSC Resolution 1244; the delegation of power was prior and explicit; the resolution sufficiently defined limits and provided a fixed mandate with adequate precision in regard to objectives, roles, and responsibilities; and the military leadership was required to report to the UNSC.[82] Hence, the ECtHR concluded that 'the UNSC was to remain actively seized of the matter' and retained sufficient authority and control to have the conduct of the peacekeeping operation attributed to the UN.[83] In regard to UNMIK, the ECtHR concluded that as a subsidiary organ of the UN, the actions of the organ were also 'in principle, "attributable" to the UN.'[84]

Although the decision in *Behrami* and *Saramati* has been followed in a number of subsequent cases,[85] it has been subject to intense criticism. These criticisms have included: that the ECtHR failed to apply the test of 'effective control' set out by in article 7 of the ARIO, opting instead for 'ultimate authority and control';[86] that the Court incorrectly weighted the exercise of 'territorial control' over the exercise of 'factual control' in regard to the impugned conduct;[87] that the Court did not consider the possibility of dual attribution to

[81] Ibid.
[82] Ibid [58].
[83] Ibid.
[84] Ibid [62]-[63].
[85] See *Berić and Others v Bosnia and Herzegovina* (European Court of Human Rights, Application Nos 36357/04, 36360/04, 38346/04, 41705/04, 45190/04, 45578/04, 45579/04, 45580/04, 91/05, 97/05, 100/05, 101/05, 1211/05, 1123/05, 1125/05, 1129/05, 1132/05, 1133/05, 1169/05, 1172/05, 1175/05, 1177/05, 1180/05, 1185/05, 20793/05 and 25496/05, 16 October 2007); *Gajic v Germany* (European Court of Human Rights, Application No 31446/02, 28 August 2007); *Kalinić and Bilbija v Bosnia and Herzegovina* (European Court of Human Rights, Application Nos 45541/04 and 16587/07, 13 May 2008).
[86] Giorgio Gaja, Special Rapporteur, *Second Report on the Responsibility of International Organizations*, UN Doc A/CN.4/541 (2 April 2004) [26] ('Second Report').
[87] Roisin Sarah Burke, *Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility Under International Law* (PhD Thesis, The University of Melbourne, 2012) 233-234.

both the State and the UN;[88] and that the Court should have focused on the question of whether the impugned act can be attributed to the State rather than the question of whether the conduct can be attributed to the UN.[89] This last criticism is particularly important as the ECtHR does not have jurisdiction over the UN but, rather, only has jurisdiction over its member States. Despite these criticisms, *Behrami* and *Saramati* continues to be one of the principal cases on the attribution of the conduct of peacekeeping forces to the UN.

In comparison, different findings on the attribution of the conduct of peacekeeping forces have been made by domestic courts. In a recent judgment by the Supreme Court of the Netherlands, *Netherlands v Nuhanović*, the Supreme Court affirmed that it was the Dutch State that exercised 'effective control' over the Dutch battalion of UN peacekeepers ('Dutchbat') in regard to the impugned act.[90] This matter concerned the deaths of three men during the Srebrenica genocide after being turned away from a 'safe area' under Dutchbat control. Pursuant to article 8 of the ARS, the Court found that the Dutch State had 'factual control over specific conduct.'[91] The Supreme Court held that the context in which the disputed conduct took place differed from normal operations because the UN mission had failed and a joint decision had been made by the UN and the Dutch government to evacuate Dutchbat and the refugees in Srebrenica.[92] The Court found that during this time, both the UN and the Dutch government had control over Dutchbat and were closely involved in the evacuation process.[93] Despite finding that the State was responsible for the impugned act,

[88] Verdirame, above n 23, 116-117; Simm, above n 56, 494-495.
[89] Verdirame, above n 23, 110-113.
[90] *Netherlands v Nuhanović* [Supreme Court of The Netherlands] Case No 12/03324, 6 September 2013 [3.13].
[91] Ibid [3.11.3].
[92] Ibid [3.12.2].
[93] Ibid.

the Supreme Court also affirmed the possibility of dual attribution, thereby 'leaving open' the possibility that the UN also had effective control over the Dutchbat forces at the time.[94]

Hence, the attribution of the conduct of peacekeeping forces continues to be an unsettled area of law. In fact, in September 2013, the Netherlands Supreme Court even referred to this as an 'unwritten area of international law.'[95] This uncertainty has been acknowledged by Guglielmo Verdirame who has observed that, 'there can be no hard and fast rule on command and control of UN peacekeeping missions, and each instance of conduct can be attributed only on the basis of careful examination of the facts, including an assessment of command and control structures both as conceived and as implemented.'[96] Despite the disputed case law, the principle remains, as codified in article 7 of the ARIO, that the conduct of an organ of a State that is placed at the disposal of an international organisation *can* be attributed to the organisation, if certain conditions are met. Hence, in principle, the conduct of a State's military forces which are placed at the disposal of the UN for its peacekeeping operations may be attributed to the UN if effective control over that conduct can be demonstrated.

Assuming that the conduct of a particular peacekeeping operation is attributable to the UN, article 6(2) further states that this conduct must be 'in the performance of functions of that organ or agent.' This is clarified in the Commentaries as referring to conduct that is undertaken in the course of exercising functions given to the organ or agent by the organisation. It does not include acts undertaken in a private capacity.[97]

[94] Ibid [3.11.2].
[95] Ibid [3.7].
[96] Verdirame, above n 23, 201.
[97] *ARIO with Commentaries*, above n 58, 18.

Although there is much domestic jurisprudence on the delineation between 'official' and 'private' acts and on the vicarious liability of States, there is little guidance in the international or domestic jurisprudence on international organisations. One example may be found in the case law of the European Court of Justice (ECJ) in *Sayag v Leduc*.[98] In this matter, the Court considered the case of a traffic accident that was caused by Sayag, an employee of Euratom, whilst driving a private vehicle in the course of conducting official business. In determining the matter, the ECJ considered whether the 'act performed on the occasion of the exercise of those duties… serves directly for the accomplishment of a [European] Community task.'[99] The ECJ adopted quite a narrow understanding of the acts involved in the 'accomplishment of a Community task' and held that the driving of a private motor vehicle was not an act performed in an official capacity 'save in the exceptional cases in which this activity cannot be carried out otherwise.'[100] Hence, no vicarious liability on the part of the European organisation was found.

In regard to peacekeeping operations, a similar position distinguishing between 'official' and 'private' acts has been put forth by the UN Office of Legal Affairs. In a memorandum, the Office of Legal Affairs stated that:

> United Nations policy in regard to off-duty acts of the members of peacekeeping forces is that the Organization has no legal or financial liability for death, injury or damage resulting from such acts... We consider the primary factor in determining an 'off-duty' situation to be whether the member of a peacekeeping mission was acting in a nonofficial/non-operational capacity when the incident occurred... [A] member of the Force on a state of alert may [also] assume an off duty status if he/she

[98] *Sayag v Leduc* (European Court of Justice, Case 5/68, 11 July 1968).
[99] Ibid 402.
[100] Ibid.

independently acts in an individual capacity, not attributable to the performance of official duties, during that designated 'state-of-alert' period.[101]

The exclusion of acts undertaken in a private capacity may be an obstacle to establishing the organisational responsibility of the UN for acts of SEA. Committing acts of SEA would never be a part the official duties of UN peacekeeping personnel. However, the requirement of only 'official' acts being attributable to Organisation may not be as strict as the discussion thus far implies.

First, the ARIO is intentionally broad in what may constitute 'the performance of functions' of the organisation.[102] The Commentaries state that the ARIO 'intended to leave the possibility open that, in exceptional circumstances, functions may be considered as given to an organ or agent even if this could not be said to be based on the rules of the organization.'[103] This was affirmed by the Special Rapporteur when he wrote that 'when practice develops in a way that is not consistent with the constituent instrument, the organization should not necessarily be exempt from responsibility.'[104] Hence, conduct such as SEA may not be provided for in the rules of the Organisation but this does not necessarily exempt the UN from responsibility. This argument may be even stronger for conduct that is systemic, widespread, and ongoing, as acts of SEA on by UN peacekeeping personnel appear to be.

The Commentaries also state that the mere fact that the conduct was undertaken in an off-duty capacity does not necessarily exclude the responsibility of the international

[101] *ARIO with Commentaries*, above n 58, 28-29; 'Memorandum to the Director, Office for Field Operational and External Support Activities' [1986] *United Nations Juridical Yearbook* 300.
[102] *ARIO with Commentaries*, above n 58, 17-18.
[103] Ibid 19.
[104] Gaja, 'Second Report', above n 86, [24].

organisation if the conduct breached an obligation of prevention that may exist under international law.[105] Therefore, the UN may still bear responsibility for the conduct of its peacekeeping personnel if the 'off-duty' misconduct breached the UN's positive obligations to prevent this misconduct.[106] The example referred to in the Commentaries is the case of the tortious acts committed by members of the UN Emergency Force (UNEF) during their off-duty period.[107] In this matter, the UN Office of Legal Affairs advised that 'there may well be situations involving actions by Force members off duty which the United Nations could appropriately recognise as engaging its responsibility.'[108] Following the advice of the UN Office of Legal Affairs, the UNEF Claims Review Board proceeded to settle claims that had been lodged against the Organisation for damages caused by these tortious acts.[109]

Similarly, it may be argued that the responsibility of the UN may be engaged for breaching an obligation to prevent acts of SEA. This obligation may be found in: the mandates of some peacekeeping operations which expressly provide that one of the functions of the operation is to 'protect… civilians from violations of international humanitarian law and human rights abuses, including all forms of sexual and gender-based violence';[110] the Charter which provides that the UN was established to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women';[111] or in the obligations found under international human rights law, as discussed in Chapter

[105] *ARIO with Commentaries*, above n 58, 29.
[106] Verdirame, above n 23, 126.
[107] International Law Commission, *Responsibility of International Organizations: Comments and Observations received from International Organizations*, 63rd sess, UN Doc A/CN.4/637/Add.1 (17 February 2011) 15 ('*Comments from IOs*').
[108] Quoted in *ARIO with Commentaries*, above n 58, 29. Original quote reference given within the *ARIO with Commentaries* is: 'This passage of an unpublished opinion was quoted in the written comment of the Secretariat of the United Nations, A/CN.4/637/Add.1, sect. II.B.4, para. 4.'
[109] 'Comments from IOs', above n 107, 15.
[110] SC Res 1925, UN SCOR, 6324th mtg, UN Doc S/RES/1925 (28 May 2010) art 12(c).
[111] *Charter of the United Nations* preamble.

Three.[112] Therefore, it is not a clear-cut case that the UN bears no responsibility for its peacekeeping personnel simply because they were 'off-duty' at the time of the misconduct. Instead, this will depend on the nature of the misconduct, the circumstances of the misconduct, any failures to prevent the misconduct, and the responsibilities and functions of the particular peacekeeping operation.

In addition, in regard to UN military forces over which the UN has command and control, it has also been argued that the UN should follow the more stringent *lex specialis* on attribution within international humanitarian law (IHL).[113] The UN's commitment to the observance of IHL in all situations of armed conflict, including in its peacekeeping operations, has been affirmed by the Secretary-General in his 1999 bulletin, *Observance by United Nations Forces of International Humanitarian Law*.[114] Pursuant to article 91 of Additional Protocol I of the Geneva Conventions and article 3 of the Hague Conventions (IV), States 'shall be responsible for *all* acts committed by persons forming part of its armed forces.'[115] Hence, for UN peacekeeping forces operating under the same conditions, the UN should also be responsible for 'all' acts committed by its armed forces which would include acts committed in both an official and a private capacity. This would, thereby, include all acts of SEA regardless of their status as 'private' acts.

Second, article 8 of the ARIO provides that the responsibility of international organisations may be engaged for the *ultra vires* conduct of its agents and organs. Pursuant to article 8,

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[112] The extent of the obligations that the UN has under international human rights law will be discussed in Chapter Five.
[113] Verdirame, above n 23, 127; Zwanenburg, above n 1, 84.
[114] Kofi A Annan, *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, UN Doc ST/SGB/1999/13 (6 August 1999) art 1.1.
[115] *Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts,* open for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) art 91; *Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land*, open for signature 18 October 1907, 187 CTS 227 (entered into force 26 January 1910) art 3 (emphasis added).

'[t]he conduct of an organ or agent of an international organization shall be considered an act of that organization… if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.'[116] The Commentaries clarify that *ultra vires* conduct includes both conduct that is within the competence of the organisation but which exceeds the authority of the agent, and conduct that exceeds the competence of the organisation itself.[117]

The definitive formulation of *ultra vires* was developed by the French-Mexican Claims Commission in the case of *Caire* in which the actions of two Mexican officers caused the death of a French national. In *Caire,* it was held that responsibility may be attributed to the State if the officers 'acted under cover of their status as officers and used means placed at their disposal on account of that status.'[118] This formulation has been repeated in the ARS Commentaries which provides that the difference between private conduct and *ultra vires* conduct is that, in the latter, the organ or agent was 'acting in the name of the State.'[119] By extension, this could arguably include agents of an international organisation if the agents were acting in the name of the organisation.

In regard to the UN, the ARIO Commentaries refer to the ICJ's 1962 Advisory Opinion (*Certain Expenses of the United Nations*) in which the Court held that it may be possible to attribute the act of an agent of the UN to the Organisation if the act constituted *ultra vires*

[116] *ARIO* art 8.
[117] *ARIO with Commentaries*, above n 58, 26.
[118] *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, UN GAOR, 53rd sess (2001) 46 ('*ARS with Commentaries*'). Reference to the original case within the *ARS with Commentaries* is: 'UNRIAA, vol. V (Sales No. 1952.V.3), p. 516, at p. 531 (1929).'
[119] Ibid 42.

conduct.[120] Conversely, the ICJ's 1999 Advisory Opinion (*Difference Relating to Immunity from Legal Process*) cautioned that 'all agents of the United Nations, in whatever official capacity they act, must take care not to exceed the scope of their functions, and should so comport themselves as to avoid claims against the United Nations.'[121]

It is possible that some instances of SEA by UN peacekeeping personnel may constitute *ultra vires* conduct. This may be the case if the act was perpetrated whilst the UN personnel member was acting under the cover of his peacekeeping authority and used means that were at his disposal because of his status.[122] For example, if a UN personnel member were to withhold services, protection, or aid from a beneficiary unless the beneficiary satisfied an express or implied request for sexual favours, this may constitute *ultra vires* conduct. In such cases, it may be argued that the UN personnel member was acting within his official function (e.g. the provision of services or aid) but exceeded his authority by asking the beneficiary for more than was required to receive the service provision or aid. Another example, as discussed in Chapter Two, is if a UN peacekeeper were to approach a child under the cover of being a UN peacekeeper and, after using his official status to gain the trust of the child, perpetrated acts of SEA against the child.

Third, the ARIO provides that conduct may be attributed to an international organisation if the organisation adopts the conduct as its own. Article 9 states that '[c]onduct which is not attributable to an international organization under articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to the extent that the

[120] *ARIO with Commentaries*, above n 58, 27; *Certain Expenses of the United Nations (Article 17, Paragraph 2 of the Charter) (Advisory Opinion)* [1962] ICJ Rep 151, 168.
[121] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion)* [1999] ICJ Rep 62, 89 [66]; *ARIO with Commentaries*, above n 58, 28.
[122] *ARS with Commentaries*, above n 118, 46.

organization acknowledges and adopts the conduct in question as its own.'[123] An organisation may have a range of motivations for accepting responsibility for a particular conduct. For example, the organisation may wish to uphold its own values and principles and to maintain its legitimacy, it may be trying to avoid condemnation from other international actors, or it may simply desire to do 'the right thing'. These reasons may be even more compelling for the UN considering the strong principles upon which the Organisation was founded and the damage that acts of SEA on its peacekeeping operations have caused.[124] The ARIO thus enables an international organisation to accept responsibility for a particular conduct even if that conduct does not fall neatly within the scope of an internationally wrongful act. In addition, the ARIO enables an international organisation to accept responsibility for either part or all of the conduct, as article 9 expressly states that this is to be based on 'the extent' to which an organisation wishes to accept responsibility.[125]

Therefore, there are several ways in which acts of SEA may be attributed to the UN despite the conduct not being a part of the performance of the official functions of UN peacekeeping personnel. First, a wider reading of 'function' may be taken which could include the duty to protect the civilian population from harm. Hence, acts of SEA may be a violation of this wider function of peacekeeping operations. It may also be possible to hold the UN responsible for failing in the positive obligations it has to prevent acts of SEA. Second, it may be questioned whether a particular case of SEA was *ultra vires* conduct, where the agent acted under the cover of his status but in which the conduct exceeded the authority of the agent. Third, even if acts of SEA do not fall within the conduct provided for in articles 6 to 8,

[123] *ARIO* art 9.
[124] *Charter of the United Nations* preamble.
[125] *ARIO with Commentaries*, above n 58, 29.

the UN may acknowledge and adopt the conduct as its own and accept responsibility for the conduct.

ii) The Second Element: The Breach of an International Obligation

Article 4 sets out the second element for an internationally wrongful act which is that the conduct 'constitutes a breach of an international obligation of that organization.'[126] The Commentaries clarify that 'the term "international obligation" means an obligation under international law and that this includes obligations established by customary international law, by a treaty, and by a general principle applicable within the international legal order.'[127] Article 10(2) states that this may also include 'the breach of an international obligation that may arise for an international organization towards its members under the rules of the organization.'[128] Therefore, the demarcation between 'international law' and 'not international law' is important for determining the scope of the conduct that may or may not engage the responsibility of an international organisation under the ARIO.[129]

In regard to obligations under international treaty law, in Chapter Three it was argued that acts of SEA may be a violation of international human rights law, such as the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) or the *Convention on the Rights of the Child* (CRC). If acts of SEA by UN peacekeeping personnel are indeed violations of international human rights law, then these acts would be a breach of an international obligation. The question remains, however, whether the violation of international human rights law is also a breach of an international obligation *of the organisation*. Considering that international human rights treaties are only binding upon State parties, and that the UN is not a State party to any human rights treaty, does the UN

[126] *ARIO* art 4(b).
[127] *ARIO with Commentaries*, above n 58, 31.
[128] *ARIO* art10(2).
[129] Verdirame, above n 23, 98.

actually have any obligations under international human rights law? The various arguments for and against this matter will be discussed in Chapter Five.

In Chapter Three, it was also argued that if an act of SEA constituted a war crime, a crime against humanity or genocide, then the act would be a breach of international criminal law. Furthermore, if the act of SEA fulfilled the elements of trafficking under the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UN Protocol), then it would be a breach of the international law on human trafficking. In both cases, the act of SEA would be a breach of an international obligation. However, similar to international human rights law, the issue remains as to whether the obligations under international criminal law or the international law on human trafficking are actually binding upon international organisations.

In relation to peacekeeping operations, the UN may also have international obligations arising out of its peacekeeping mandates, if the peacekeeping mandate constitutes 'international law'. The issue of whether peacekeeping mandates constitute international law has been considered by Guglielmo Verdirame. In regard to peacekeeping mandates that are Security Council resolutions, Verdirame has argued that the legally binding nature of Security Council resolutions means that these mandates constitute international law. [130] Therefore, the breach of a peacekeeping mandate based on a Security Council resolution could be an internationally wrongful act.[131] It follows, then, that if the duty to protect the local population from SEA was a part of the peacekeeping mandate, then acts of SEA would be a breach of an international obligation.

[130] Ibid.
[131] Ibid.

In regard to mandates that are composed of internal administrative regulations, Verdirame has stated that the conclusion is less clear. Referring to the ICJ's 2010 Advisory Opinion (*Declaration of the Independence of Kosovo*), Verdirame notes that in this matter the Court found that there may be some internal regulations that possess international law characteristics, such as the regulations adopted by the Special Representative on behalf of UNMIK.[132] Hence, a closer examination of any internal regulations pertaining to UN peacekeeping operations is required to determine whether the regulation may be characterised as international law. If the regulation is merely internal, the ARIO states that any obligations that arise are only 'towards its members.'[133] In this case, breaches of these regulations would only constitute a breach of an obligation towards the UN's Member States and not towards third-parties, such as survivors of SEA.

Furthermore, it is important to determine to whom the international obligation is owed. This is addressed in article 33 of the ARIO which provides that international obligations 'may be owed to one or more States, to one or more other organizations, or to the international community as a whole.'[134] The ARIO also states that the provisions within it are 'without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.'[135] However, injured or affected individuals do not fall within the scope of legal actors covered by the ARIO. In fact, the Commentaries provide the explicit example of 'breaches committed by peacekeeping forces and affecting individuals' as being 'not covered by the present… articles.'[136] This may be an insurmountable obstacle to applying the ARIO to the issue of SEA if the aim is to seek organisational responsibility for

[132] Ibid 99; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo (Advisory Opinion)* [2010] ICJ General List No 141.
[133] *ARIO* art 10(12).
[134] Ibid art 3.
[135] Ibid art 50.
[136] *ARIO with Commentaries*, above n 58, 59.

the harm committed against individual victims. An alternative, although more convoluted and laborious approach, may be for the State of the individual to claim the injury towards its citizen(s) as an injury towards itself and for the State to then invoke the responsibility of the UN. However, this raises many legal, political, and practical challenges such as the lack of legal precedent, the motivation of the State to take such action, and the often precarious situation of victims who, for practical purposes, may not have a State to turn to for their protection, such as refugees or members of a persecuted minority. Therefore, the limitations within article 33 may constitute the main obstacle for victims of SEA to be able to establish the organisational responsibility of the UN through the framework of the ARIO.

In sum, the ARIO represents a 'progressive development'[137] of the law on the responsibilities of international organisations for internationally wrongful acts. However, as an area of law that is not yet settled, the law on the responsibility of international organisations remains subject to varying interpretations and applications. Hence, the ARIO has been criticised for producing 'a highly heterogeneous and disparate concept[ion]'[138] of how and when a particular conduct may engage the responsibilities of an international organisation. This uncertainty is evident in the application of the ARIO to acts of SEA committed during peacekeeping operations where it is unclear if the act should be conceptualised as a private or off-duty act, as connected to the broader functions of the operation, as *ultra vires*, or as an act that may or should be adopted by the Organisation as its own conduct. Furthermore, certain provisions, such as the scope of to whom the obligations may be owed, limit the applicability of the ARIO to the issue of SEA. Regardless of these uncertainties, however, the general principle of the ARIO – that international organisations *should* be held responsible for internationally wrongful acts - is still of value.

[137] Ibid 2.
[138] Jean d'Aspremont, 'The Articles on the Responsibility of International Organizations: Magnifying the Fissures in the Law of International Responsibility' (Legal Studies Research Paper No 2012-95, Amsterdam Law School, 2012) 10.

In addition, the ARIO has been useful for understanding the concept of an 'internationally wrongful act' and when such an act may be attributed to an international organisation.

4.5 Voluntary Acceptance of Responsibility

Although the responsibility of international organisations continues to be a grey area, the UN has on occasion, in both statement and action, accepted its potential or actual legal responsibility. This has included the acceptance of responsibility for the activities of its peacekeeping forces. For example, a report by the Secretary-General has stated that:

> [t]he international responsibility of the United Nations for the activities of United Nations forces is an attribute of its international legal personality and its capacity to bear international rights and obligations. It is also a reflection of the principle of State responsibility - widely accepted to be applicable to international organizations - that damage caused in breach of an international obligation and which is attributable to the State (or to the Organization), entails the international responsibility of the State (or of the Organization) and its liability in compensation.[139]

The Secretary-General's report offers the example of the settlement of third-party claims lodged against the Organisation for damages caused by UN forces as evidence that the Organisation has recognised its liability for its operations.[140] Regulations issued by the Organisation also provide that the UN has the ability to make *ex gratia* payments in cases where there is no clear legal liability but in which the payments are 'necessary in the interest of the Organisation.'[141]

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[139] 'Financing the UN Peace Forces', above n 51, 4 [6].
[140] Ibid 4 [8].
[141] *Financial Regulations and Rules of the United Nations*, UN Doc ST/SGB/2003/7 (9 May 2003), regulation 5.11 and financial rule 105.12.

In practice, there have been occasions in which the UN has paid compensation for damages that were caused during its peacekeeping operations. The most well-known example is from its 1960-1964 operation in the Congo in which the UN paid compensation for damages caused to persons and properties of nationals from Belgium, Switzerland, Greece, Luxembourg, Italy, Zambia, the US, the UK, France, and the International Committee of the Red Cross.[142] In response to a significant number of claims for damages lodged against the Organisation, the UN initiated an investigation process which found that 'United Nations agents had in fact caused unjustifiable damage to innocent parties' and that these damages were not the result of actions taken out of 'military necessity.'[143] Through a series of agreements concluded between the Secretary-General and the permanent missions of the affected States, several lump-sum payments in compensation were made by the Organisation.[144] In relation to these payments, the Secretary-General has acknowledged that:

> [i]t has always been the policy of the United Nations, acting through the Secretary-General, to compensate individuals who have suffered damages for which the Organization was legally liable. This policy is in keeping with generally recognized legal principles and with the *Convention on Privileges and Immunities of the United Nations*. In addition, in regard to the United Nations activities in the Congo, it is reinforced by the principles set forth in the international conventions concerning the protection of the life and property of the civilian population during hostilities as well as by considerations of equity and humanity which the United Nations cannot ignore.[145]

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[142] *ARIO with Commentaries*, above n 58, 61.
[143] 'Exchange of Letters Constituting an Agreement between the United Nations and Belgium relating to the Settlement of Claims filed against the United Nations in the Congo by Belgian Nationals' [1965] *United Nations Juridical Yearbook* 39.
[144] 'Report of the International Law Commission on the work of its twenty-seventh session (5 May-25 July 1975)' [1975] II *Yearbook of the International Law Commission* 47, 88.
[145] Quoted in *ARIO with Commentaries*, above n 58, 61.

It has been argued that examples such as the Congo have 'establish[ed] precedent for some form of liability when peacekeeping personnel under [the UN's] command and control commit illegal acts.'[146] However, the number of examples of such cases is still limited.[147]

In regard to current peacekeeping operations, article 51 of the Model SOFA provides for the establishment of a 'claims commission' for the settlement of third-party claims against the Organisation for damages caused by UN forces in the performance of their official duties.[148] A report by the Secretary-General has stated that article 51 is 'evidence [of] the recognition on the part of the United Nations that liability for damage caused by members of United Nations forces is attributable to the Organization.'[149] However, criticisms have been made that the UN's significant role in the appointment of the members of the claims commission means that the commission 'may be perceived as too close to the UN personnel who are the subject of the complaints.'[150] Moreover, such commissions have rarely been established in practice.[151] Instead, third-party claims against the Organisation have often been resolved through other means, such as settlements.[152]

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[146] Catherine Sweetser, 'Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel' (2008) 83(5) *NYU Law Review* 1643, 1663.

[147] Another example is the case of the Gashi brothers who were paid compensation by UNMIK for wrongful extended detention. See ibid, 1664-1665.

[148] *Model SOFA*, above n 38, art 51, [7].

[149] *Financing the UN Peace Forces*, above n 51, [8].

[150] Simm, above n 56, 498.

[151] Zwanenburg, above n 1, 90.

[152] Ibid. Recent examples of complaints settled by the UN in relation to its peacekeeping operations include: compensation paid to a family in Afghanistan following a fatality in 2010-2011; a payment of $3,418 to the father of a daughter who was injured during an exchange of gunfire between MINUSTAH personnel and others in 2010; a payment of $2,262.74 to a civilian who was injured during a gunfire exchange between MINUSTAH personnel and others, for medical costs and financial support in 2009; a payment of $7,000 to a civilian whose spouse was killed during a gunfire exchange between MINUSTAH personnel and others, for funeral costs in 2009; and a payment of $4,000 to a Syrian local who was injured in a motor accident at an United Nations Disengagement Observer Force (UNDOF) checkpoint in 2008. See, *Financial Report and Audited Financial Statements for the Biennium ended 31 December 2011 and Report of the Board of Auditors*, UN GAOR, 67th sess, Supp No 5, UN Doc A/67/5 (Vol. I) (26 July 2012), 54; *Financial Report and Audited Financial Statements for the 12-month period from 1 July 2009 to 30 June 2010 and Report of the Board of Auditors, Volume II: United Nations Peacekeeping Operations*, UN GAOR, 65th sess, Supp No 5, UN Doc A/65/5 (Vol. II) (18 January 2011), 75; *Financial Report and Audited Financial Statements for the 12-month period from 1 July 2008 to 30 June 2009 and Report of the Board of Auditors, Volume II: United Nations Peacekeeping Operations*, UN GAOR, 64th sess, Supp No 5, UN Doc

Whilst voluntary compensation by the UN may be appreciated, both as a form of redress and as a gesture of responsibility, this should not be a substitute for a formal and independent process to determine the legal responsibility of the UN. The establishment of a formal and independent process would provide greater rigour and transparency than the status quo in which the recognition of liability is 'based on [the UN's own] assessment as to the Organization's exposure to legal liability.'[153] This current process creates a precarious situation for survivors of SEA as it leaves the assessment of the responsibility of the Organisation to the Organisation itself. Instead, the assessment of the Organisation's responsibility should be undertaken by an independent third party in a fair and transparent manner. Such an independent assessment would provide a greater guarantee of justice for victims and survivors of SEA.

4.6 Conclusion

In principle, there are many arguments that may be made for the UN's responsibility for the wrongful acts that have been committed during its peacekeeping operations. In a strict legal sense, however, the responsibility of the UN is much harder to establish. The international legal personality of the UN has endowed the Organisation with certain capacities, rights, and responsibilities. These responsibilities may be found in the Organisation's internal law, in domestic law, and in international law. However, the exact scope of these legal responsibilities, such as in the ARIO, is still a developing area of law and there is yet to be any clear authority on precisely how, when, and for what acts the UN may be held responsible.

A/64/5 (Vol. II) (4 February 2010), 74; *Financial Report and Audited Financial Statements for the 12-month period from 1 July 2007 to 30 June 2008 and Report of the Board of Auditors, Volume II: United Nations Peacekeeping Operations*, UN GAOR, 63rd sess, Supp No 5, UN Doc A/63/5 (Vol. II) (13 February 2009), 37.

[153] 'Memorandum to the Controller', above n 47, 383 [10].

Whilst the UN has demonstrated that in some cases it is willing to accept responsibility and to offer compensation for the wrongful acts that have been committed by its personnel, this is not sufficient to ensure that justice will be provided to victims and survivors of SEA. Particularly in light of the ongoing and widespread occurrence of SEA, the assessment of the UN's responsibility for these violations should not be left to the Organisation itself but should be undertaken through an independent, fair, and transparent process that is available and accessible to victims and survivors.

Whilst the examination in this chapter of the theoretical and legal principles underpinning the responsibilities of international organisations has been important, survivors of SEA also need a practical and effective avenue through which to hold the UN to account for the violations that they have suffered. In the following chapter, the discussion will move from a theoretical examination of the legal responsibilities of the UN to a consideration of the ability of individual survivors to hold the UN to account through various courts, tribunals, and other forums. The options and obstacles for survivors will be outlined in Chapter Five, before a proposal for an alternative solution will be presented in Chapter Six.

Chapter 5

The Current Accountability of the United Nations for Sexual Exploitation and Abuse

The United Nations (UN) has grown significantly in its size, scope, and functions since its creation in 1945. The ability of international law to regulate international organisations, however, has not grown at the same pace. This includes the ability of the international legal system to hold international organisations to account for internationally wrongful acts. In this chapter, the difficulty of establishing the legal accountability of the UN will be examined. In particular, three main limitations will be discussed. The first limitation is the difficulty of determining the international laws that are applicable to the UN and, therefore, the breaches of law that the UN may be held accountable for. The second difficulty is being able to find an international court in which proceedings can be brought against the UN due to limitations *ratione materiae*[1] and *ratione personae.*[2] The third limitation is the difficulty of bringing proceedings against the UN before domestic courts because of the extensive legal immunities that the Organisation enjoys. Therefore, individuals who allege that they have suffered a human rights violation by the UN face significant obstacles in being able to establish the legal accountability of the UN for its wrongful actions. This includes victims and survivors of sexual exploitation and abuse (SEA) by UN peacekeeping personnel. In this chapter, it will be demonstrated that the current legal system makes it difficult for survivors to, first, know what their rights are in relation to the UN and, second, to find a court, tribunal, or other body to have the violation of their rights addressed.

[1] *Ratione materiae* is the subject-matter jurisdiction of the court.
[2] *Ratione personae* is the personal reach of the court's jurisdiction.

5.1 International Law and the United Nations

The first obstacle to establishing the legal accountability of the UN is being able to determine exactly what laws are applicable to the UN. This includes the application of international human rights law. The UN's obligations under international human rights law have been widely debated. Many authors have argued that international human rights law *should* be applicable to the UN and have argued that this is particularly important due to the increasing power of the UN to directly impact on the lives of individuals, such as through its military operations and administration of territory.[3] However, it has been difficult to establish a clear legal basis for the UN's human rights obligations.[4] Without this clear legal basis, it is hard to argue that the UN can be held legally accountable for the violation of, or failure to protect, human rights. The arguments for the UN's human rights obligations and their legal basis will now be examined.

It has been widely accepted that the UN possesses international legal personality[5] and has the legal capacity to conclude treaties. For example, the UN Charter provides that the Organisation 'shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purpose.'[6] The conclusion of treaties falls well within the legal capacity necessary for the fulfilment of its purpose. The Charter also provides the UN with express powers to enter into agreements with Member States regarding material support for maintaining international peace and security (article 43), agreements with specialised agencies (article 63), and agreements to

[3] See, eg, Gabriele Porretto and Sylvain Vité, 'The Application of International Humanitarian Law and Human Rights Law to International Organisations' (Research Paper Series No 1, University Centre for International Humanitarian Law, 2006) 41; Frédéric Mégret and Florian Hoffmann, 'The UN as a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities' (2003) 25(2) *Human Rights Quarterly* 314, 338-339; Ralph Wilde, 'From Danzig to East Timor and Beyond: The Role of International Territorial Administration' (2001) 95 *American Journal of International Law* 583, 599.

[4] Noëlle Quénivet, 'Binding the United Nations to Human Rights Norms but Way of the Laws of Treaties' (2010) 42 *George Washington International Law Review* 587, 588.

[5] As discussed in Chapter Four.

[6] *Charter of the United Nations* art 104.

place territories under trusteeship (chapter XII). The express power 'to contract' is also provided for in the *Convention on the Privileges and Immunities of the United Nations* (General Convention).[7] In addition, the UN has concluded agreements which extend beyond these express powers, such as the Status-of-Forces Agreement (SOFA) that the Organisation concludes with the host State to a peacekeeping operation.[8]

Despite the UN's capacity to conclude treaties, international human rights treaties generally only allow for States to become a party to the treaty and do not provide for the signature, ratification, or accession of international organisations, such as the UN.[9] This includes the two core human rights treaties (the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)), and 'specialist' treaties such as the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).[10] In accordance with the 1969 *Vienna Convention on the Law of Treaties*, treaties are only binding upon those who are a party to the treaty (article 1) and, as a general rule, treaties do not create obligations or rights on a third State (and, arguably, other third parties such as the UN) (article 34).[11] Hence, the *lex lata* is clear. Even though the UN has the legal capacity to enter into treaties, it is currently not a party and cannot become a party to any international human rights treaty.

[7] *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February 1946, 1 UNTS 15 and 90 UNTS 327 (entered into force 17 September 1946) art 1 ('*General Convention*').
[8] Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions* (Thomas Reuters (Legal) Ltd, 2009) 484.
[9] Quénivet, above n 4, 591. There are three treaties that are exceptions to this. These will be discussed later in the chapter.
[10] *International Covenant on Civil and Political Rights*, open for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('*ICCPR*'); *International Covenant on Economic, Social and Cultural Rights*, open for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976) ('*ICESCR*'); *United Nations Convention on the Elimination of All Forms of Discrimination against Women,* opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981) ('*CEDAW*').
[11] *Vienna Convention on the Law of Treaties,* opened for signature 23 May 1969, 1155 UNTS 3311 (entered into force 27 January 1980) art 1 and 34 ('*Vienna Convention*').

Despite the *lex lata*, many different authors have put forth arguments as to how the UN could be or should be bound to international human rights law. These arguments have been classified by Mégret and Hoffmann as conceptualising the law in three different ways: (i) the 'internal' conception which draws upon the UN's constitutive documents and internal legal order; (ii) the 'external' conception which focuses on the UN as an international legal actor and the external laws that are applicable to the Organisation; and (iii) the 'hybrid' conception which argues that the UN may be 'transitively' bound to human rights law because its Member States are bound.[12]

In regard to the first conception, it has been argued that the UN has human rights obligations which may be found in its constitutive document, the UN Charter, and its internal legal order. For example, the Preamble to the Charter sets out the UN's determination 'to reaffirm faith in fundamental human rights.'[13] Article 1(3) states that the purposes of the UN include 'promoting and encouraging respect for human rights and for fundamental freedoms for all.'[14] Article 13 tasks the General Assembly with initiating studies and making recommendations for several purposes including 'assisting in the realization of human rights and fundamental freedoms.'[15] Finally, article 55(c) states that the UN 'shall promote… universal respect for, and observance of, human rights' as a part of its work to promote global economic and social cooperation.[16] In regard to its peacekeeping operations, many UN peacekeeping mandates also expressly refer to human rights.[17] For

[12] Mégret and Hoffmann, above n 3, 317-318.
[13] *Charter of the United Nations* preamble.
[14] Ibid art 1(3).
[15] Ibid art 13.
[16] Ibid art 55.
[17] See, eg, Mandate for MONUC (UN Organization Mission in the Democratic Republic of the Congo), SC Res 1291, UN SCOR, 4104th mtg, UN Doc S/RES/1291 (24 February 2000); Mandate for UNMIL (UN Mission in Liberia), SC Res 1509, UN SCOR, 4830th mtg, UN Doc S/RES/1509 (19 September 2003); Mandate for UNOCI (UN Operation in Côte d'Ivoire), SC Res 1528, UN SCOR, 4918th mtg, UN Doc S/RES/1528 (27 February 2004); Mandate for MINUSTAH (UN Stabilization Mission in Haiti), SC Res 1542, UN SCOR, 4961st mtg, UN Doc S/RES/1542 (30 April 2004); Mandate for UNMIS (UN Mission in the Sudan), SC Res 1590, UN SCOR, 5151st mtg, UN Doc S/RES/1590 (24 March 2005); Mandate for UNAMID

example, the mandate for the UN operation in the Congo provides for the 'protection of civilians from violations of international humanitarian law and human rights abuses, including all forms of sexual and gender-based violence.'[18] In addition, the UN has created a number of internal protocols that commit its peacekeeping personnel to respect human rights.[19] For example, the Department of Peacekeeping Operations (DPKO) has issued a pledge-like document which states that peacekeeping forces 'will comply with the Guidelines on International Humanitarian Law for Forces Undertaking United Nations Peacekeeping Operations and the applicable portions of the Universal Declaration of Human Rights as the fundamental basis of our standards.'[20]

Proponents of this position argue that the UN is bound to uphold its constitution and its internal legal order which, thereby, binds the Organisation to upholding the human rights standards that are a part of its constitution and internal legal order.[21] It has been argued that the direct references to human rights in the Charter are 'sufficient to establish a legal basis for their general applicability to the activities of the UN.'[22] Furthermore, it has been seen as illogical or even immoral for the UN to not have the obligation to uphold the principles upon which it was founded, or to not have the obligation to uphold the same international human rights law which it assisted to create and which it expects its Member States to uphold. For example, it has been argued that the 'institution should be presumed

(AU-UN Hybrid Operation in Darfur), SC Res 1769, UN SCOR, 5727th mtg, UN Doc S/RES/1769 (31 July 2007); Mandate for MINURCAT (UN Mission in the Central African Republic and Chad), SC Res 1778, UN SCOR, 5748th mtg, UN Doc S/RES/1778 (25 September 2007).

[18] SC Res 1925, UN SCOR, 6324th mtg, UN Doc S/RES/1925 (28 May 2010) [12(c)].

[19] See, eg, *Ten Rules: Code of Personal Conduct for Blue Helmets,* United Nations Peacekeeping <www.un.org/en/peacekeeping/documents/ten_in.pdf>: *We are United Nations Peacekeepers,* United Nations Peacekeeping <https://www.un.org/en/peacekeeping/documents/un_in.pdf>. Last Accessed: 12 August 2014.

[20] We are United Nations Peacekeepers, above n 19.

[21] Mégret and Hoffmann, above n 3, 317; Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge, 2011) 74-75.

[22] Verdirame, above n 21, 74.

to be illegitimate if its practices or procedures predictably undermine the pursuit of the very goals in terms of which it justifies its existence.'[23]

It has been pointed out, however, that while the constitutive document of the UN is legally binding upon the Organisation, many of the articles that refer to human rights do not necessarily create strong obligations. The Charter calls on the UN to 'reaffirm faith in', to 'promote and encourage' and to 'assist in the realization of' human rights.[24] The Charter does not itself expressly bind the UN to act as a guarantor of human rights in the same way that international human rights treaties create such obligations on States. Furthermore, a classical positivist approach would argue that there is a distinction between legality and legitimacy. Hence, whilst there may be *moral* obligations on the UN to act in accordance with international human rights standards, there may not necessarily be any *legal* obligations on the UN to do so.[25]

In the second conception, it has been argued that the UN, as an international legal actor, is bound by the same customary international law that binds all international legal actors and that this law includes human rights obligations.[26] Customary international law is indeed binding on all international legal actors, including international organisations. This has been affirmed by the ICJ's Advisory Opinion (*Interpretation of Agreement*) in which the Court held that '[i]nternational organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international

[23] Allen Buchanan and Robert O Keohane, 'Legitimacy of Global Governance Institutions' (2006) 20 *Ethics and International Affairs* 405, 423.
[24] *Charter of the United Nations* preamble and arts 1(3), 13 and 55(c).
[25] Mégret and Hoffmann, above n 3, 594.
[26] See, eg, Chanaka Wickremasinghe and Guglielmo Verdirame, 'Responsibility and Liability for Violations of Human Rights in the Course of UN Field Operation's' in Craig Scott (ed), *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Hart Publishing, 2001) 465, 473-474; Carla Bongiorno, 'A Culture of Impunity: Applying International Human Rights Law to the United Nations in East Timor' (2002) 33 *Columbia Human Rights Law Review* 623; Henry G Schermers and Niels Blokker, *International Institutional Law: Unity Within Diversity* (Brill, 3rd ed, 1995).

law.'[27] Some authors have proposed that there are even more arguments for customary international law to be binding upon international organisations than there is for States.[28] This is because international organisations, such as the UN, 'are established under international law. Their constitutional roots are in international law. No superiority over international law can be pleaded on their behalf.'[29] Therefore, as an 'intrinsic part of the international order,'[30] they must be bound by the rules of customary international law.

Customary international law does include some human rights obligations. The crystallisation of a human rights obligation into a rule of customary international law occurs when the obligation has fulfilled two criteria: (i) settled State practice; and (ii) *opinio juris*, which is the belief that a practice is undertaken because there is a legal obligation to do so.[31] Different views exist on the extent to which various human rights have crystallised into customary international law. On the one hand, some authors have argued that all or most of the rights enshrined in the *Universal Declaration of Human Rights* (UDHR) now constitute customary international law.[32] On the other hand, those with a more conservative position would argue that only those human rights that have attained the status of *jus cogens* are a part of customary international law.[33] In between these two positions, many continue to debate the range of human rights that already are, or will soon be, a part of customary international law. Hence, the provision of a definitive list of human rights within customary international law is difficult as '[t]here are no single sources or evidences of [customary international] human rights law; no single set of participants; and

[27] *Interpretation of Agreement of March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73, 89–90 [37].
[28] Bongiorno, above 26, 640.
[29] Schermers and Blokker, above n 26, 983-84.
[30] Bongiorno, above 26, 641.
[31] *North Sea Continental Shelf (FRG v Neth)* (Judgment) [1969] ICJ Rep [77].
[32] For a description of the development of the position that the UDHR constitutes customary international law, see Richard B Lillich, 'The Growing Importance of Customary International Human Rights Law' (1995-1996) 25 *The Georgia Journal of International and Comparative Law* 287.
[33] For a discussion of this position, see Louis Henkin, 'Sibley Lecture, March 1994 Human Rights and State "Sovereignty"' (1995-1996) 25 *Georgia Journal of International and Comparative Law* 31.

no single arenas or institutional arrangements for the creation, invocation, application, change or termination of such law.'[34]

Despite this uncertainty, some human rights obligations have attained the status of *jus cogens* or peremptory norms and, therefore, have been widely accepted as a part of customary international law. The *Vienna Convention on the Law of Treaties* has defined a peremptory norm 'as a norm form which no derogation is permitted.'[35] The evidence for the *jus cogens* status of certain human rights obligations include: (i) the existence of *opinio juris*; (ii) the language within treaties which elevates these obligations to a higher status within international law; (iii) the significant number of ratifications to treaties that prohibit these violations; and (iv) the international prosecution of these violations as crimes.[36] The best settled examples of *jus cogens*, some of which include human rights obligations, are the prohibitions against the crime of aggression, genocide, crimes against humanity, war crimes, piracy, slavery, and torture.[37] Other human rights obligations whose status is still debatable include the prohibition of rape[38] and the right to non-refoulement.[39]

[34] Jordan J Paust, 'The Significance and Determination of Customary International Human Rights Law: The Complex Nature, Sources and Evidences of Customary Human Rights' (1995-1996) 25 *Georgia Journal of International and Comparative Law* 147.
[35] *Vienna Convention* art 53.
[36] M Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59(4) *Law and Contemporary Problems* 63, 68.
[37] These examples of *jus cogens* were discussed by the International Law Commission in its Commentaries to the draft articles on the Law of Treaties. See 'Reports of the Commission to the General Assembly' (15 November 1965 - 8 January 1966) [1966] II *Yearbook of the International Law Commission* 187, 248. For a summary of the development of jus cogens in international law, see Rafael Nieto-Navia, 'International Peremptory Norms ("jus cogens") and International Humanitarian Law' in Antonio Cassesse and Lal Chand Vohrah (eds), *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* (Martinus Nijhoff Publishers, 2003) 595, 610. See, also, Bruno Simma and Philip Alston, 'Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1988) 82 *The Australian Yearbook of International Law* 12.
[38] See, eg, Maria Eriksson, *Defining Rape: Emerging Obligations for States Under International Law?* (Örebro University, 2010) 334-336.
[39] Alice Farmer, 'Non-Refoulement and Jus Cogens Limiting Anti-Terror Measures That Threaten Refugee Protection' (2008) 23(1) *Georgetown Immigration Law Journal* 1, 23-28.

The argument about customary international law is a strong argument upon which to ground some human rights obligations for the UN. This is particularly the case for human rights obligations that have attained the status of *jus cogens*. Nonetheless, in the case of SEA by UN peacekeeping personnel, the question needs to be asked as to whether the human rights violated by SEA have crystallised into customary international law. For example, some forms of violence against women may indeed be a prohibition, or an emerging prohibition, under customary international law, such as rape and other sexual violence crimes prohibited under international criminal law and international humanitarian law.[40] However, beyond these sexual violence crimes, the link between prohibitions against SEA and customary international law becomes more tenuous. For example, it was argued in Chapter Three that acts of SEA may be a violation of article 5 of CEDAW, which obligates States to modify conduct based on gender stereotyped roles, and article 12, which provides the right to family planning. It would be difficult to argue, however, that freedom from gender stereotyped roles or the right to family planning have crystallised into customary international law. Therefore, whilst the case may be made that some acts of SEA, such as rape, may be a violation of customary international law, it cannot be said that a wide range of prohibitions against SEA have crystallised into rules of customary international law.

The third position that has been put forward is that the UN is bound to international human rights law because its Member States are bound.[41] It has been argued that when the UN takes over certain functions from its Member States, such as the deployment of military forces or the administration of territory, then the UN is bound by the same obligations under international law that its Member States are bound to when they are performing

[40] Eriksson, above n 38, 334-336. For a discussion of the sexual violence crimes prohibited under international humanitarian law and international criminal law, see Chapter Three.
[41] See, eg, Quénivet, above n 4, 606; Mégret and Hoffmann, above n 3, 318; August Reinisch, 'Securing the Accountability of International Organizations' (2001) 7 *Global Governance* 31.

these functions.[42] This concept of 'legal succession by virtue of functional succession' has been developed in relation to the growing number of international organisations associated with the European Union.[43] A motivation for this development has been that it was considered unacceptable that individuals could be deprived of their human rights protection when States transferred particular functions to an international organisation.[44]

One example to support the 'succession' of human rights obligations is the approach taken by the UN Human Rights Committee in its assessment of Serbia and Montenegro's 2003 report. The State party argued that it was unable to 'discharge… its own responsibilities with regard to the human rights situation in Kosovo… owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK).'[45] The Committee accepted this argument and agreed that, in accordance with Security Council Resolution 1244, it was the responsibility of UNMIK to ensure the protection and promotion of human rights in Kosovo.[46] The Committee also emphasised the 'continuity of obligations' of the rights enshrined in the ICCPR[47] and referred to General Comment No 26 which provides that 'once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party.'[48] Therefore, the Committee concluded that the human rights protections enshrined in the ICCPR continued

[42] Quénivet, above n 4, 606.
[43] Robert Uerpmann, 'International Law as an Element of European Constitutional Law: International Supplementary Constitutions' (Jean Monnet Working Paper 9/03, Max Planck Institute for Comparative Public Law and International Law, 24-27 February 2003) 31.
[44] Ibid 32.
[45] Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee Serbia and Montenegro*, 81st sess, UN Doc CCPR/CO/81/SEMO (12 August 2004) [2].
[46] Ibid; SC Res 1244, UN SCOR, 4011th mtg, UN Doc S/RES/1244 (10 June 1999).
[47] Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Kosovo*, UN Doc CCPR/C/UNK/CO/1 (14 August 2006) [4] ('*Concluding Observations: Kosovo'*).
[48] Human Rights Committee, *General Comment No 26: Continuity of Obligations*, 61st sess, 1631st mtg, UN Doc CCPR/C/21/Rev.1/Add.8/Rev.1 (8 December 1997) [4].

for the people of Kosovo even after the change of administration to UNMIK and that '[i]t follows that UNMIK… [is] bound to respect and to ensure to all individuals within the territory of Kosovo… the rights recognized in the Covenant.'[49]

Consequently, the Human Rights Committee called on UNMIK to submit a report on the human rights situation in Kosovo.[50] UNMIK complied with this request and submitted its report on Kosovo in 2006 and its comments to the Committee's Concluding Observations in 2008.[51] Hence, it may be argued that the interaction between the Human Rights Committee and UNMIK exemplify the concept of 'legal succession' in which the human rights obligations of a State have become binding on an international organisation upon the organisation taking over that particular function from the State.

This developing legal concept, however, does not resolve the issue of whether the UN has any international human rights obligations of its own.[52] The UN is an international legal person in its own right and as such 'possesses rights, duties, powers and liabilities distinct from its members or its creators on the international plane and in international law.'[53] Therefore, the question remains, does the UN as an organisation possess any human rights obligations that are independent of the obligations of its Member States? Basing the UN's human rights obligations only upon the argument of functional treaty succession leaves this question unanswered.

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[49] '*Concluding Observations: Kosovo*', above n 47, [4].
[50] Ibid [2].
[51] Human Rights Committee, *Report Submitted by the United Nations Interim Administration Mission in Kosovo to the Human Rights Committee on the Human Rights Situation in Kosovo Since 1999*, UN Doc CCPR/C/UNK/1 (13 March 2006); Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Comments by the United Nations Interim Administration Mission in Kosovo (UNMIK) on the Concluding Observations of the Human Rights Committee*, UN Doc CCPR/C/UNK/CO/1/Add.1 (1 April 2008).
[52] Quénivet, above n 4, 606.
[53] Sanna Kyllönen, 'The Legal Framework For The Responsibility Of International Organizations' (2010) 1 *Nordic Journal of Commercial Law* 1, 5.

Another difficulty with this argument is that the concept of functional treaty succession is not provided for in any customary law, treaty law, or general principle of law recognised by States, and it remains controversial among legal scholars.[54] Therefore, in a strict legal sense, the concept of 'functional treaty succession' continues to be debatable as a legal basis upon which to ground the human rights obligations of the UN under international law.[55]

Despite the limitations of the above three arguments, there are several options for the UN to become legally bound to international human rights treaties in the future. Some of these options are more realistic than others. The most obvious option is to amend existing human rights treaties to allow for accession by international organisations in general or by the UN in particular.[56] As an analogous example, three human rights treaties have already been developed that allow for the European Union to become a party to the treaty.[57] These are: the *European Convention on Human Rights* (ECHR);[58] the *Convention on the Rights of Persons with Disabilities* (CRPD);[59] and the *Convention on Action against Trafficking in Human Beings* (CATHB).[60] There is little doubt, however, that the amendment of existing international human rights treaties would be a long and laborious process that would require significant political will. For example, the successful amendment of the ICCPR would require gaining

[54] Based on sources of law as identified in *Statute of the International Court of Justice* art 38(1) ('*ICJ Statute*').
[55] Quénivet, above n 4, 606.
[56] All human rights treaties provide a process through which the treaty may be amended. For example, article 51 of the ICCPR and article 29 of the ICESCR provide that any State party to the Covenant may propose an amendment. If this amendment is accepted by a two-thirds majority of State parties and is approved by the General Assembly, then the amendment will come into force for the parties that have accepted the amendment. See *ICCPR* art 51; *ICESCR* art 29.
[57] Quénivet, above n 4, 617.
[58] *European Convention for the Protection of Human Rights and Fundamental Freedoms*, open for signature 4 November 1950, ETS 5 (entered into force 3 September 1953) ('*ECHR*').
[59] *Convention on the Rights of Persons with Disabilities*, open for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008). Article 42 provides that: 'The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.'
[60] *Convention on Action Against Trafficking in Human Beings*, open for signature 16 May 2005, CETS No 197 (entered into force 1 February 2008) art 42(1).

the support of two-thirds of the 167 States that are currently a party to the treaty.[61] This would not be a simple task.

The second 'weaker' legal option is for the UN to bind itself to upholding international human rights law through the issuance of a declaration to that effect. For example, the UN has previously maintained that it was not legally bound to international humanitarian law because it was unable to accede to the Geneva Conventions or Additional Protocols.[62] After pressure from global civil society, as well as embarrassment from the revelation of abuses committed by UN forces, the UN agreed to become bound to the fundamental laws and customs of war.[63] This was achieved through the issuance of the Secretary-General's 1999 bulletin, *Observance by United Nations Forces of International Humanitarian Law*.[64] In the bulletin, the UN committed itself to conducting its operations 'with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel,' as well as the rules promulgated within the bulletin which at times even exceeded the obligations under international humanitarian law.[65] These obligations are now in force whenever UN forces are engaged in armed conflict, including during peacekeeping actions.[66]

Although the Secretary-General bulletin has not created or changed international law to bind the UN to international humanitarian law treaties, the bulletin is binding upon the UN as an organisation and forms part of its 'internal law'. Therefore, strictly speaking, there is no change in the status quo of international law; the Geneva Conventions and Additional

[61] Membership as of 5 March 2013. *ICCPR* art 51(2).
[62] Mégret and Hoffmann, above n 3, 645.
[63] Ibid 645-647.
[64] Kofi A Annan, *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, UN Doc ST/SGB/1999/13 (6 August 1999).
[65] Ibid s 1 and 3.
[66] Ibid.

Protocols cannot and do not bind the UN. However, the internal rules and procedures of the Organisation have changed. The UN now operates *as though it was* bound by international humanitarian law. This is a positive change as the UN, being an organisation of high moral standards, will be expected by the international community to fulfil the obligations that is has voluntarily and expressly committed itself to. On the other hand, only being a part of the 'internal law' of the Organisation means that it is the responsibility of the UN to both ensure that its obligations are fulfilled and to monitor and punish its own shortcomings. Therefore, whilst this process may provide a pragmatic and efficient way to impose some notion of obligation on the UN, the UN will ultimately be 'bound' to these obligations only to the extent that it chooses to be.

In sum, this section has examined the first obstacle to establishing the legal accountability of the UN. As demonstrated, the UN is not bound to international human rights treaties in their current form. Therefore, if it is difficult to demonstrate that the UN is bound to international human rights law, then it will also be difficult to argue that the UN should be legally accountable for violations of international human rights law, such as through acts of SEA by its peacekeeping personnel.

5.2 International Courts and the United Nations

The second challenge to establishing the legal accountability of the UN is the identification of a court, tribunal, or other forum through which the Organisation may be held to account. The most obvious option for holding an international legal actor to account for breaches of international law would be before an international court. However, in regard to the UN, this is an extremely difficult course of action for individuals to pursue. This difficulty has been acknowledged by the Belgium Court of Appeal in *Manderlier v United Nations and Belgian State*. In this matter, the Court considered a claim brought by an individual for damages to

his property allegedly caused by UN forces in the Congo. Reluctantly, the Court acknowledged that 'it must be admitted that in the present state of international institutions there is no court to which the appellant can submit his dispute with the United Nations.'[67] Similarly, individuals wishing to pursue this option for allegations of SEA by UN peacekeeping personnel will face the same difficulties. This section will examine some of the obstacles to bringing an action against the UN before an international court.

The ability of an international court to hear a matter against the UN is restricted by: (i) limitations in the personal reach of the court's jurisdiction (*ratione personae*); and (ii) limitations in the subject-matter jurisdiction of the court (*ratione materiae*). For example, the main obstacle to pursuing a matter in front of the International Court of Justice (ICJ) is the limitation *ratione personae*. The ICJ is the principal judicial organ of the UN and has the authority to entertain two types of cases. The first are 'contentious cases' which are legal disputes between States. According to article 35, only States which are party to the ICJ statute (including all UN Member States)[68] or States which have accepted the jurisdiction of the ICJ may be parties to contentious cases.[69] Therefore, neither international organisations nor individuals are able to bring contentious cases to the ICJ. The ICJ also has the authority to issue 'Advisory Opinions'. Article 96(1) of the UN Charter provides that the General Assembly and the Security Council may request an Advisory Opinion on 'any legal question' and article 96(2) provides that other organs and specialised agencies of the UN may request an Advisory Opinion 'on legal questions arising within the scope of their activities.'[70] Whilst

[67] *Manderlier v United Nations and Belgian State* (Court of Appeals of Brussels, 69 ILR 139, 15 September 1969). Published in 'Manderlier v United Nations and Belgian State: Decision of Brussels Appeals Court Belgium' [1969] *United Nations Juridical Yearbook* 236, 237 ('*Manderlier v United Nations*').
[68] Article 93(1) of the UN Charter provides that all Members of the UN are *ipso facto* parties to the ICJ Statute. See *Charter of the United Nations* art 93(1).
[69] *ICJ Statute* art 35.
[70] *Charter of the United Nations* art 96(1)-96(2).

Advisory Opinions are not legally binding,[71] their 'great legal weight and moral authority'[72] are believed to give the decision the same status 'as [if] it were sanctioned by international law.'[73] Therefore, whilst the ICJ may provide a forum through which the UN itself may request an Advisory Opinion on legal questions related to SEA on peacekeeping operations, this is not a course of action which is available to individual victims and survivors. In fact, the ICJ has stated that '[t]he Court has rejected all such requests by private parties.'[74]

Similar difficulties are encountered with the International Criminal Court (ICC) where both limitations *ratione materiae* and *ratione personae* prevent individuals from pursuing legal action against the UN. The ICC is the first permanent international court to have jurisdiction over persons for the most serious of international crimes.[75] Pursuant to article 25 of the Rome Statute, the Court has jurisdiction only over natural persons.[76] Therefore, only natural persons may be held individually responsible and may be liable for punishment for the crimes enumerated in the Statute. Hence, the ICC has no jurisdiction to try international organisations, such as the UN. In addition, cases are to be referred to the Court by a State party, the Security Council, or the Chief Prosecutor.[77] Therefore, individual victims of crimes have no authority to refer their case to the ICC on their own accord.

A further difficulty is the subject-matter jurisdiction of the ICC. A high threshold must be met for an alleged crime to fall within the crimes enumerated in the Rome Statute. In accordance with article 5, the crimes that fall within the jurisdiction of the ICC are the crime

[71] Unless provided for beforehand by another legal instrument. See *Advisory Jurisdiction*, International Court of Justice <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=2>. Last Accessed: 12 August 2014.
[72] Ibid.
[73] *How the Court works*, International Court of Justice <http://www.icj-cij.org/court/index.php?p1=1&p2=6>. Last Accessed: 12 August 2014.
[74] Ibid.
[75] *Rome Statute of the International Criminal Court*, open for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 1 ('*Rome Statute*').
[76] Ibid art 25.
[77] Ibid art 13.

of aggression, genocide, crimes against humanity, and war crimes.[78] Therefore, for an act of SEA to constitute a crime under the Rome Statute, the act also needs to fulfil the additional elements of either genocide, crimes against humanity, or war crimes. However, as discussed in Chapter Three, most acts of SEA by peacekeeping personnel would not fulfil the requisite elements of these crimes. Therefore, the acts committed by peacekeeping personnel would not come within the subject-matter jurisdiction of the ICC.

In addition to the ICC, there are a number of ad hoc international criminal tribunals that have been established to try crimes committed in connection with specific armed conflicts, such as the International Criminal Tribunal for the former Yugoslavia (ICTY)[79] and the International Criminal Tribunal for Rwanda (ICTR).[80] Similar difficulties in regard to *ratione materiae* and *ratione personae* exist for these courts. Furthermore, these ad hoc tribunals have a limited geographical and temporal jurisdiction as they were established to try crimes committed during a specific conflict. Therefore, the ad hoc criminal tribunals are even more limited in the cases that may be declared within their jurisdiction and would not be an effective avenue for survivors of SEA to pursue legal action against the UN.

Moving on from international judicial bodies, there are a number of international quasi-judicial bodies that may also be considered. For example, in regard to human rights violations, the communications procedures of some UN treaty bodies, such as the Human Rights Committee, may be a forum through which accountability may be pursued.[81] However, UN treaty bodies only have the competency to consider allegations of human

[78] Ibid art 5(g).
[79] SC Res 808, UN SCOR, 3175th mtg, UN Doc S/INF/49 (25 May 1993) ('*Statute of the International Criminal Tribunal for the Former Yugoslavia*').
[80] SC Res 955, UN SCOR, 3453rd mtg, UN Doc S/RES/955 (8 November 1994) ('*Statute of the International Criminal Tribunal for Rwanda*').
[81] The UN treaty bodies and their communications procedures will be discussed further in Chapter Six.

rights violations committed by State parties and not by international organisations.[82] Therefore, UN treaty bodies do not have the competency to examine complaints against the UN or its peacekeeping operations.

In addition, there are a number of regional human rights mechanisms which are able to assess allegations of breaches of regional human rights treaties, such as the European Court of Human Rights (ECtHR), the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHPR), and the African Court on Human and Peoples' Rights (AfCHPR). These regional human rights mechanisms, however, have similar limitations to the UN treaty bodies. For example, whilst the ECtHR is able to receive individual applications from any person, non-governmental organisation, or group of individuals alleging a breach of the European Convention on Human Rights (ECHR) or its Protocols, the allegations may only be made against one of the High Contracting Parties.[83] The ECtHR will not accept allegations against individuals or against international organisations. Similar limitations exists for the IACHR, IACHPR, and AfCHPR.[84] Therefore, none of the regional human rights courts have the jurisdiction to hear allegations of human rights violations committed by the UN.

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[82] See, eg, *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entry into force 23 March 1976) art 1 ('*OP ICCPR*'); *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 10 December 1999, 2131 UNTS 83 (entered into force 22 December 1981) art 2 ('*OP CEDAW*'); *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, open for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 22 ('*CAT*'); *International Convention on the Elimination of All Forms of Racial Discrimination*, open for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 14 ('*CERD*'); *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, open for signature 13 December 2006, UN Doc A/RES/61/106 Annex II (entered into force 3 May 2008) art 1 ('*OP CRPD*'); *International Convention for the Protection of All Persons from Enforced Disappearance*, opened for signature 6 February 2007, UN Doc A/61/488 (entered into force 23 December 2010) art 31 ('*CPED*'); *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,* open for signature 10 December 2008, UN Doc A/RES/63/117 (entered into force 5 May 2013) art 1.

[83] *ECHR* art 34.

[84] *American Convention on Human Rights*, open for signature 22 November 1969, OAS Treaty Series No 36, 1144 UNTS 123 (entered into force 18 July 1978) art 44 and 62; *African Charter on Human and Peoples' Rights*, open for signature 27 June 1981, OAU Doc AB/LEG/67/3 rev. 5, 21 ILM 58 (entered into force 21 October 1986) art 48, 49 and 55.

In sum, the second obstacle to establishing the legal accountability of the UN is the difficulty faced by individuals in bringing allegations against the UN before any international or regional judicial or quasi-judicial body. As demonstrated, limitations *ratione personae* and *ratione materiae* prevent matters of SEA by UN peacekeeping personnel from falling within the court's jurisdiction.

5.3 Domestic Courts and the United Nations

The third obstacle to establishing the legal accountability of the UN is the difficulty of bringing the UN within the jurisdiction of domestic courts. There has been a long history of individuals attempting to pursue a range of allegations against the UN through domestic courts. However, very few of these actions have been successful. The main obstacle has been the seemingly absolute immunity to suit that the Organisation enjoys and the tendency of domestic courts to dismiss actions brought against the UN on these grounds. This section will consider the immunities that have been granted to the UN and whether this constitutes an insurmountable obstacle for survivors of SEA.

The UN enjoys legal privileges and immunities in accordance with the doctrine of functional necessity. This means that the Organisation enjoys the privileges and immunities that are 'necessary for the fulfilment of [its] purposes and functions'[85] and which ensure that the Organisation is able to carry out its activities with legal and practical independence.[86] The scope of this immunity includes immunity from the jurisdiction of the State on whose territory it operates, immunity from the jurisdiction of its Member States, and immunity in relation to the Organisation's acts, personnel, and property.[87]

[85] CF Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge University Press, 2005) 316.
[86] Josef L Kunz, 'Privileges and Immunities of International Organizations' (1947) 41 *American Journal of International Law* 828, 836.
[87] Amerasinghe, above n 85, 316.

The importance of this immunity has long been recognised and respected. In 1944, the legal advisor to the League of Nations, Hugh McKinnon Wood, provided three reasons for these immunities.[88] These reasons were: to avoid the danger of prejudice or bad faith within national courts; to protect against baseless actions brought by improper motives; and to avoid the undesirability of allowing the courts of particular Members to determine, quite possibly in different senses, the legal effects of acts performed in the exercise of the Organisation's functions.[89]

The immunities accorded to the UN come from a variety of sources including its constituent document, international treaties, bilateral treaties, and domestic legislation. Pursuant to article 105 of the UN Charter, the UN 'shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes' and its Members and Officials shall 'enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.'[90] The scope of this immunity was particularised in the *Convention on the Privileges and Immunities of the United Nations* (General Convention) which provides that '[t]he 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.'[91] The General Convention also provides privileges and immunities for three categories of persons: Member State representatives, UN officials, and experts on mission.[92] The General Convention provides these actors with 'immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties' and

[88] Hugh McKinnon Wood, 'Legal Relations between Individuals and a World Organization of States' (1944) 30 *Transactions of the Grotius Society* 141, 143-144.
[89] Ibid.
[90] *Charter of the United Nations* art 105.
[91] *General Convention* art 2.
[92] Ibid art 4, 5 and 6.

immunity for acts 'performed by them in their official capacity.'[93] However, these immunities are '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.'[94] In regard to the immunities granted to UN officials, the Secretary-General has the 'right' and the 'duty' to waive immunity if such immunity would 'impede the course of justice.'[95] Following the General Convention, the *Convention on the Privileges and Immunities of Specialized Agencies* (Special Convention) was also concluded which granted similar immunities to the specialised agencies of the UN, such as the International Labour Organisation, the International Monetary Fund, and the World Health Organisation.[96]

In regard to UN peacekeeping operations, provisions for the legal immunity of the UN's property and personnel may be found in the Model Status-of-Forces Agreement (SOFA).[97] The Model SOFA provides that a UN peacekeeping operation, as a subsidiary organ of the UN, enjoys the privileges and immunities enshrined in the General Convention and any additional privileges and immunities as provided for in the SOFA of a particular mission.[98] Additional regulations may also be adopted which promulgate further immunities. For example, *Regulation No 2000/47 on the Status, Privileges and Immunities for KFOR and UNMIK and their Personnel in Kosovo* provides that all UNMIK and KFOR personnel, both military and civilian, are to be 'immune from jurisdiction before courts in Kosovo in respect of any administrative, civil or criminal act committed by them in the territory of Kosovo' and 'immune from any form of arrest or detention other than by persons acting on behalf of

[93] Ibid art 4 s 12 and art 5 s 18.
[94] Ibid art 4 s 14.
[95] Ibid art 5 s 20.
[96] *Convention on the Privileges and Immunities of Specialized Agencies*, open for signature 21 November 1947, 33 UNTS 261 (entered into force 2 December 1948) ('*Special Convention*').
[97] *Model Status-of-Forces Agreement for Peacekeeping Operations*, UN GAOR,45th sess, Agenda Item 76, UN Doc A/45/594 (9 October 1990) [15] ('*Model SOFA*').
[98] Ibid.

their respective sending State.'[99] Furthermore, these immunities are to 'continue after UNMIK and KFOR's mandate expires or after such entities and/or personnel are no longer employed by UNMIK or KFOR.'[100]

The UN has also been granted various privileges and immunities by the domestic legislation of different States. For example, the United States' *International Immunities Act 1945* grants international organisations, such as the UN, 'the same immunity from suit and every form of judicial process as is enjoyed by foreign governments.'[101] Similar domestic legislation may be found, for example, in the United Kingdom (*International Organisations (Privileges and Immunities) Act 1968*)[102] and Australia (*International Organisations (Privileges and Immunities) Act 1963*).[103]

Despite these immunities, many attempts have been made by individuals to engage the UN in litigation before domestic courts. Actions have been brought against the UN, its subsidiary organs, its specialised agencies, and individual persons such as Officials and Representative Members. These actions have included a wide array of allegations, such as an alleged breach of contract in relation to the production of a UNESCO calendar,[104] the alleged unlawful possession of the plaintiff's property during a humanitarian operation in

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[99] *UNMIK Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo*, UN Doc UNMIK/REG/2000/47 (18 August 2000) s 2.4.
[100] Ibid s 5.
[101] *International Organizations Immunities Act*, 22 USC (1945).
This has created some confusion, however, in regard to the extent of the immunities that have been granted to international organisations: "[i]t is unclear whether… by granting to international organizations immunity co-extensive with that of foreign governments, confers the absolute immunity foreign governments enjoyed at the time of the Act's passage, or the somewhat restrictive immunity provided for in the [Foreign Sovereign Immunities Act]." See *Boimah v United Nations General Assembly*, 664 F Supp 69 (EDNY, 1987). For a discussion of this issue, see Jan Wouters and Pierre Schmitt, 'Challenging Acts of Other United Nations' Organs, Subsidiary Organs, and Officials' in August Reinisch (ed), *Challenging Acts of International Organizations Before National Courts* (Oxford University Press, 2010) 77, 89.
[102] *International Organisations (Privileges and Immunities) Act 1968* (UK) c 48.
[103] *International Organisations (Privileges and Immunities) Act (1963)* (Cth).
[104] *Entico Corporation Ltd v United Nations Educational Scientific and Cultural Association (UNESCO)* [High Court of Justice] EWHC 531 (Comm), 18 March 2008.

Somalia,[105] the alleged defamation of the plaintiff by a UN staff member,[106] traffic violations,[107] non-compliance of a sequestration order,[108] and a number of disputes brought by UN staff members or contractors regarding their employment.[109] The broad scope of UN's legal immunities, however, has often rendered these actions futile. The long history of unsuccessful litigation brought against the UN does not fare well for survivors of SEA who may wish to take a similar course of action.

Domestic courts have largely respected the UN's immunity[110] and have generally declared that they lack jurisdiction in the matter before them. For example, the Supreme Court of Austria found that 'the immunity of international organizations must, [as] a matter of principle, be regarded as absolute when they are acting within the limits of their

[105] 'Adbi Hosh Askir (Plaintiff) vs. United Nations, Hon. Boutros Boutros Ghali, Joseph E. Connor, Brown & Root Services Corp. and "Doe" Corporations (Defendants): Judgement No. 95 Civ. 11008 (JGK) of 29 July 1996, United States District Court for the Southern District of New York' [1996] *United Nations Juridical Yearbook* 502 ('*Askir v United Nations*').

[106] 'Mark Steven Corrinet, (Plaintiff) vs. United Nations, Hon. Boutros Boutros, Ghali, Gillian Sorensen and Ron Ginns (Defendants): Judgement No. C-95-0426 SAW. Memorandum and Order of 10 September 1996 United States District Court for the Northern District of California' [1996] *United Nations Juridical Yearbook* 530 ('*Corrinet v United Nations*').

[107] 'X v Department of Justice and Police: Judgement of 15 June 1977 Administrative Tribunal of the Republic and Canton of Geneva Switzerland' [1977] *United Nations Juridical Yearbook* 257.

[108] 'Esterya Menon v. Alice E. Weil et al.: Judgement of 26 March 1971 Civil Court of the City of New York, New York County' [1971] *United Nations Juridical Yearbook* 249.

[109] See, eg, 'Judgment of the Court of Appeal of The Hague, LJN: BA 2778 (15 March 2007) The Netherlands' [2007] *United Nations Juridical Yearbook* 505; 'Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the Staff Association of the International Civil Aviation Organization and Wayne Dixon, Respondents & Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the International Civil Aviation Organization and Dirk Jan Goossen, Respondents: Canada Court of Appeal' [2005] *United Nations Juridical Yearbook* 511; 'Gérald René Trempe v. The ICAO Staff Association and Wayne Dixon; Gérald René Trempe v. Dirk Jan Goossen, the ICAO Council and Jesus Ocampo Province of Quebec, 20 November 2003, No. 500–05–061028–005 and No. 500–05–063492–019 High Court Canada' [2003] *United Nations Juridical Yearbook* 585; *Boimah v United Nations General Assembly*, 664 F Supp 69 (EDNY, 1987); 'Ministry of Foreign Affairs Communiqué to the President of the Special Federal Conciliation and Arbitration Board No. 14 Mexico' [1989] *United Nations Juridical Yearbook* 395; 'Mrs. C. v. Intergovernmental Committee for European Migration (ICEM): Decision of 7 June 1973 Supreme Court of Cassation (Plenary for Civil Matters, Italy)' [1973] *United Nations Juridical Yearbook* 197; 'Anton Jakesch v. International Atomic Energy Agency: Decision of 8 July 1971 Labour Court of Vienna Austria' [1972] *United Nations Juridical Yearbook* 208; 'Decision of 8 November 1969 concerning an action brought in a Labour Court against the Economic Commission for Latin America Supreme Court, Chile' [1969] *United Nations Juridical Yearbook* 237; 'Giovanni Porru v. Food and Agriculture Organization of the United Nations: Judgement of 25 June 1969 Rome Court of First Instance (Labour Section), Italy' [1969] *United Nations Juridical Yearbook* 239.

[110] August Reinisch, *Convention on the Privileges and Immunities of the United Nations, Convention on the Privileged and Immunities of the Specialized Agencies*, United Nations Audiovisual Library of International Law <http://legal.un.org/avl/ha/cpiun-cpisa/cpiun-cpisa.html>. Last Accessed: 12 August 2014.

functions.'[111] The statement of 'the United Nations' immunity is absolute,'[112] or words to that effect, have been repeated a multitude of times across many different domestic jurisdictions and in regard to many different matters.[113] This position has been supported by the ICJ's 1999 Advisory Opinion (*Differences Relating to the Immunity from Legal Process*) which held that national courts were obligated to respect the UN's immunity and were not to make determinations about whether the UN's immunity should apply.[114] In this matter, the ICJ considered the case of an interview given by the Special Rapportuer on the Independence of Judges and Lawyers, Param Cumaraswamy, which resulted in him being sued by a number of Malaysian companies for defamation.[115] The ICJ held that Cumaraswamy had spoken his words within the performance of his official mission and, therefore, that his immunity applied.[116] Hence, the ICJ found that the Malaysian courts' failure to respect Cumaraswamy's immunity breached international law.[117] Whilst the ICJ did agreed that the UN is required to bear responsibility for any damages arising from its actions, the Court held that 'claims against the United Nations shall not be dealt with by national courts but shall be settled in accordance with the appropriate modes of settlement that "[t]he United Nations shall make provision for" pursuant to Section 29 [of the General Convention].'[118]

The immunity enjoyed by the UN and its personnel, however, may be waived if this immunity is to 'impede the course of justice.'[119] The authority to waive the UN's immunity is

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[111] 'Firma Baumeister Ing. Richard L v. O… 14 December 2004, File No. 100b53/04y Austria Supreme Court' [2004] *United Nations Juridical Yearbook* 394.
[112] *Boimah v United Nations General Assembly*, 664 F Supp 69 (EDNY, 1987).
[113] See, eg, ibid; *Askir v United Nations*, above n 105; *Corrinet v United Nations*, above n 105.
[114] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion)* [1999] ICJ Rep 62 ('*Difference Relating to Immunity from Legal Process*').
[115] Ibid [5].
[116] Ibid [56].
[117] Ibid [62]-[63].
[118] Ibid 89.
[119] *General Convention* art 5 s 20.

invested in the Secretary-General. This has been affirmed by the ICJ[120] and has been upheld by a number of domestic courts. For example, in *Mark Steven Corrinet v United Nations, Hon Boutros Boutros, Ghali, Gillian Sorensen and Ron Ginns*, the US District Court found that '[f]or a court to look at the facts and find that the Secretary-General should have waived immunity would fly in the face of the express language of the Convention… Indeed, absolute immunity would be worthless if courts were permitted to override the Secretary-General's decision as to whether that immunity should be waived.'[121] In addition, the waiver of immunity by the Secretary-General must be express,[122] must not prejudice the interests of the UN,[123] and domestic courts should be 'slow' or 'reluctant' to find an express waiver.[124]

The Secretary-General has exercised his authority to waive the immunity of UN personnel on a number of occasions. This has generally occurred when the enforcement of immunity would have been an impediment to the course of justice and/or when the acts were committed in a private capacity. A memorandum issued by the UN Office of Legal Affairs clearly states that UN 'personnel do not enjoy immunity from arrest or prosecution for alleged acts which are not related to their official duties.'[125] However, there is no definition of 'official duties' or 'official capacity'.[126] Instead, these are asserted to be 'functional expressions' and are to be determined on a case-by-case basis.[127] For example, travel

[120] *Difference Relating to Immunity from Legal Process* [1999] ICJ Rep 62.
[121] *Corrinet v United Nations*, above n 105.
[122] 'Note verbale to the Permanent Representative of a Member State to the United Nations regarding a civil suit instituted in the Conciliation and Arbitration Board' [2008] *United Nations Juridical Yearbook* 406, 407.
[123] *General Convention* art 5 s 20.
[124] *Boimah v United Nations General Assembly*, 664 F Supp 69 (EDNY, 1987).
'This policy underlying the immunity of an international organization also suggests that the court should be slow to find an "express" waiver. As the Mendaro court noted, "courts should be reluctant to find that an international organization has inadvertently waived immunity when the organization might be subjected to a class of suits which would interfere with its functions".' [617]
[125] 'Memorandum to the Deputy Chef de Cabinet' [1964] *United Nations Juridical Yearbook* 228.
[126] 'Opinion of the Legal Advisor of the International Labour Office' [1977] *United Nations Juridical Yearbook* 247.
[127] Ibid.

between home and work has been found to not constitute an 'official act'[128] and immunity has often been waived in relation to automobile accidents so that civil actions may proceed.[129] The Secretary-General has also waived immunity, for example, on request from Swiss law enforcement authorities who sought to investigate a UN staff member for 'grave allegations of a criminal nature' and on request from United States authorities who were investigating federal criminal charges in relation to money laundering.[130]

The waiving of immunities by the Secretary-General, however, has thus far only been applied to individual personnel. The Secretary-General has never waived the immunity of the Organisation *per se*, nor of its specialised agencies or subsidiary organs. Hence, whilst in some circumstances the *individual* legal liability of UN personnel has been subject to determination by domestic courts, the ability to determine the *organisational* liability of the UN has remained firmly out of the jurisdiction of domestic courts. In regard to UN peacekeeping operations, this may mean that individual immunity may be waived and survivors of SEA may be able to pursue the liability of the alleged perpetrator through a domestic court. However, for the purposes of this thesis, which seeks to establish the organisational accountability of the UN, a waiver of the immunity of the Organisation is needed which has not yet occurred.

In recent times, however, there has been a growing trend within European courts to deny the immunity of an international organisation if upholding that immunity would amount to a 'denial of justice.' This recent turn in the European jurisprudence has been prompted by

[128] Ibid.
[129] 'Internal memorandum' [1964] *United Nations Juridical Yearbook* 263.
[130] 'Interoffice memorandum to the Assistant Secretary-General for Human Resources, regarding waiving of immunity from legal process of officials of the Organization, other than Secretariat Officials and Experts on Mission' [2007] *United Nations Juridical Yearbook* 415.

the decision in *Waite and Kennedy v Germany*.[131] In *Waite and Kennedy*, two British nationals had brought a case against the European Space Agency (ESA) before the German courts in regard to the termination of their contracts.[132] However, their cases were declared inadmissible due to the ESA's immunity.[133] The applicants subsequently submitted to the European Court of Human Rights (ECtHR) that they had experienced a violation of the right to a fair trial as enshrined in article 6 of the European Convention on Human Rights (ECHR).[134] Although the Court affirmed the importance of the immunities granted to international organisations and agreed that these immunities pursued a legitimate aim,[135] the Court held that the grant of immunity depended on 'whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention.'[136] In this matter, the Court found that the ESA Appeals Board constituted a reasonable alternative and that there had been no breach of the Convention.

Despite finding against the applicants, this judgment has been considered significant because the ECtHR actually took into consideration whether or not to set aside the immunity of an international organisation on the grounds that the immunity may violate the right to a fair trial. As observed by Philippe Sands and Pierre Klein, the case has 'been read to mean, *a contrario*, immunity from jurisdiction would amount to a denial of justice wherever such internal remedies are non-existent.'[137]

Since *Waite and Kennedy*, a number of domestic European courts have followed the reasoning of the ECtHR and have questioned the immunity of international organisations in

[131] *Waite and Kennedy v Germany* (European Court of Human Rights, Application No 26083/94, 18 February 1999) ('*Waite and Kennedy*').
[132] Ibid [14]-[15].
[133] Ibid [17]-[22].
[134] Ibid [44].
[135] Ibid [63].
[136] Ibid [68].
[137] Sands and Klein, above n 8, 498.

cases where there may have been a 'denial of justice.'[138] For example, in *Banque africaine de développement v MA Degboe*, the French Court of Cassation considered the matter of a former employee of the African Development Bank who was unable to access the organisation's administrative tribunal because it lacked temporal jurisdiction over his claim.[139] The Court found that in this case there had been a denial of justice and that the international organisation was not entitled to immunity from suit.[140] As the African Development Bank is constituted mainly of African (rather than European) States, the Court did not rely on article 6 of the ECHR but, instead, invoked the concept of the 'international public order,' which the Court held included a prohibition of the 'denial of justice.'[141] This approach has been argued by August Reinisch to 'demonstrate… that the idea of a "forfeiture" of immunity in cases in which no alternative remedy is provided for is not limited to those situations where the right of access to justice is derived from the ECHR. Rather, it indicates that this concept may be "transferable" to other jurisdictions, where it may be based on due process or the prohibition of denial of justice understood as elements of an "ordre public international" or equally of customary international law.'[142]

This development in the case law of European courts has been received positively by some commentators[143] and questioned by others.[144] However, the dismissal of the immunity of

[138] See, eg, *Pistelli v European University Institute* [Corte di Cassazione (Sez. Unite Civili)] No 20995, 28 October 2005, [14.3]; *B et al v EPO* [German Federal Constitutional Court] 2BvR 1458/03, 3 July 2006; *SA Energies Nouvelles et Environnement v Agence Spatiale Européenne (European Space Agency)* [Court of First Instance] 6216 JdT 171, ILDC 1229 (BE 2005), 1 December 2005; *Entico Corporation Ltd v United Nations Educational Scientific and Cultural Association (UNESCO)* [High Court of Justice] EWHC 531 (Comm), 18 March 2008, [27]; *Siedler v Western European Union, Appeal Judgment* [Brussels Court of Appeal] JT 2004, 617, ILDC 53 (BE 2003), 17 September 2003*; African Development Bank v Mr X* [French Court of Cassation,] Appeal No 04-41012; ILDC 778 (FR 2005), 25 January 2005.

[139] *African Development Bank v Mr X* [French Court of Cassation,] Appeal No 04-41012; ILDC 778 (FR 2005), 25 January 2005, 1142. Discus3.3sed in August Reinisch, 'The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals' (2008) 7(2) *Chinese Journal of International Law* 285, 298.

[140] Ibid.

[141] Ibid.

[142] Ibid.

[143] See, eg, Wouters and Schmitt, above n 101; Reinisch, above n 139.

international organisations due to a 'denial of justice' is far from well-established within the European jurisprudence.[145] Despite the assertion that this 'evolution of case law justified by the human rights principle of access to courts [will] offer individuals an efficient mechanism to challenge the UN,'[146] all the cases that have successfully applied this principle have involved smaller regional organisations with a 'lesser' standing in the international community than the UN.

Indeed, the difficulty of applying this emerging legal principle to the UN has recently been affirmed by the Supreme Court of the Netherlands. In April 2012, the Supreme Court held in the *Mothers of Srebrenica* case that the Court of Appeal had erred in applying *Waite and Kennedy* to the UN and in considering whether article 6 in the ECHR could prevail over the UN's immunity.[147] Instead, the Supreme Court referred to article 103 of the UN Charter which states that '[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.'[148] Hence, the Supreme Court found that '[the UN's] immunity is absolute. Moreover, respecting it is among the obligations on UN member states which… prevail over conflicting obligations from another international treaty.'[149]

This finding is similar to a much earlier decision by the Brussels Court of Appeal which held that the obligation to respect the UN's immunity is to prevail over, and is not conditional upon, the respect for provisions within other international treaties. The Court of Appeal

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[144] See, eg, Sands and Klein, above n 8; Charles H Bower, 'International Immunities: Some Dissident Views on the Role of Municipal Courts' (2000-2001) 41 *Virginia Journal of International Law* 1.
[145] Sands and Klein, above n 8, 498.
[146] Wouters and Schmitt, above n 101, 110.
[147] *Mothers of Srebrenica et al v State of The Netherlands and the United Nations* [13 April 2012] Case No 10/04437 (Supreme Court of The Netherlands) [4.3.5] ('*Mothers of Srebrenica*').
[148] *Charter of the United Nations* art 103.
[149] *Mothers of Srebrenica* [13 April 2012] Case No 10/04437 (Supreme Court of The Netherlands) [4.3.6].

found in the *Manderlier* case that States were required to respect the UN's immunity even if the Organisation itself did not respect its own obligations, such as if it had failed to 'make provisions for appropriate modes of settlement' pursuant to section 29 of the General Convention[150] or, in the language of the recent jurisprudence of the ECtHR, if there was a 'denial of justice' because the UN had failed to provide the victim with an appropriate mode of settlement to resolve his or her dispute. Therefore, despite this development in the European jurisprudence, it is doubtful whether the 'denial of justice' could provide grounds to dismiss the UN's immunity.

In sum, the actions that have been taken by individuals to pursue the UN's legally accountable through domestic courts have been largely unsuccessful. The immunity of the Organisation has in most cases been respected and the majority of cases against the UN have been dismissed based on a lack of jurisdiction by domestic courts. In some cases, the Secretary-General has agreed to waive immunity and this has enabled some civil or criminal actions to proceed. However, these have all been confined to cases seeking individual legal responsibility rather than organisational responsibility. In addition, the recent trend in the European courts of dismissing organisational immunity due to a 'denial of justice' may not be applicable to the UN. Therefore, the immunity of the UN from legal process remains more or less absolute and, as such, presents a significant obstacle to survivors of SEA who wish to pursue legal actions against the UN through their domestic courts.

5.4 Conclusion

The ability to establish the UN's legal accountability continues to be a frustratingly difficult task. Many obstacles stand in the way of being able to hold the UN to account and to ensuring that the UN is subject to the law in the same way that other legal actors are. These

[150] *Manderlier v United Nations*, above n 67, 236.

obstacles include: the difficulties in determining the obligations that the UN has under international human rights law; the limitations *ratione personae* or *ratione materiae* of international courts; and the lack of jurisdiction of domestic courts due to the UN's extensive immunities.

Nonetheless, the occurrence of SEA by UN peacekeeping personnel is evidence that the Organisation is capable of committing, or of failing to prevent, human rights violations. As such, it would indeed be a denial of justice if there was no possible avenue through which to pursue the accountability of the UN for the harmful actions that have been perpetrated under its watch. For survivors of SEA, the explanations in this chapter on the difficulties of holding the UN to account bring little relief from the suffering and pain that they have endured. Survivors need a space in which to put forth their allegations, to have their allegations assessed in a fair and transparent manner, and to be provided with remedy and redress, if appropriate. If the current system of international, regional, and domestic courts does not provide such a space, then it is time to consider alternative forums. In the next chapter, an alternative proposal will be put forth on how the UN may be held accountable for acts of SEA on its peacekeeping operations in the future and how survivors of SEA may finally be able to obtain some recognition, remedy, and relief.

CHAPTER 6

A Possible Solution: The Role of the UN Treaty Bodies

Allegations of sexual exploitation and abuse (SEA) have greatly damaged the reputation and legitimacy of the United Nations (UN) and its peacekeeping operations.[1] Despite the time and effort that the UN has spent addressing the problem, acts of SEA continue to occur and more allegations against UN personnel are received by the Organisation every year.[2] Establishing the legal accountability of the UN, however, is no easy feat. In this chapter, one possible solution will be considered which moves beyond the traditional means of seeking justice through international, regional, and domestic courts. In this chapter, it will be proposed that the communications procedures of the UN treaty bodies may provide a viable alternative process through which to hold the UN to account.

As discussed in Chapter Three, acts of SEA may be a violation a number of international human rights treaties. Individuals who have experienced a violation of their treaty rights may submit a complaint to the relevant UN treaty body, if the treaty body has a communications procedure.[3] For example, individuals may submit a complaint about a

[1] As discussed in Chapter Two.

[2] See, eg, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 67th sess, Agenda Item 135, UN Doc A/67/766 (28 February 2013); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 66th sess, Agenda Item 139, UN Doc A/66/699 (17 February 2012); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 65th sess, Agenda Item 134, UN Doc A/65/742 (18 February 2011); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 64th sess, Agenda Item 137 and 146, UN Doc A/64/669 (18 February 2010); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 63rd sess, Agenda Item 123 and 132, UN Doc A/63/720 (17 February 2009); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 62nd sess, Agenda Item 133 and 140, UN Doc A/62/890 (25 June 2008); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 61st sess, Agenda Item 123 and 132, UN Doc A/61/957 (15 June 2007); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 60th sess, Agenda Item 129 and 136, UN Doc A/60/861 (24 May 2006); *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 59th sess, Agenda Item 114 and 123, UN Doc A/59/782 (15 April 2005).

[3] The UN treaty bodies with communications procedures are:

violation of their rights under the *International Covenant on Civil and Political Rights* (ICCPR) to the Human Rights Committee, and children may submit a complaint about the violation of their rights under the *Convention on the Rights of Child* (CRC) and the *Optional Protocol to the Convention on the Rights of Child* (OP CRC) to the Committee on the Rights of the Child.[4] However, as explained in Chapter Five, the UN treaty bodies are currently unable to receive complaints against the UN due to limitations in the 'personal jurisdiction' of the Committees.

In this chapter, it will be argued that the competency of the UN treaty bodies should be expanded to enable them to consider allegations of SEA against UN peacekeeping personnel. This argument will be established by: first, considering why the UN treaty bodies may be an appropriate and effective forum through which to deal with the issue of SEA; second, demonstrating the benefits for both individual survivors and the UN; and, third, examining the changes that are needed to establish this process.

Rather than considering all nine UN treaty bodies that currently have communications procedures, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) will be used as an example to examine one treaty body in detail. The CEDAW

- The Human Rights Committee;
- The Committee on Elimination of Discrimination against Women;
- The Committee against Torture;
- The Committee on the Elimination of Racial Discrimination;
- The Committee on the Rights of Persons with Disabilities;
- The Committee on the Rights of the Child;
- The Committee on Enforced Disappearances; and
- The Committee on Economic, Social and Cultural Rights.

The Committee on Migrant Workers has an individual complaints mechanism but it has not yet entered into force.

See *Human Rights Bodies - Complaints Procedures* (2012) United Nations Office of the High Commissioner on Human Rights < http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>. Last Accessed: 12 August 2014.

[4] *International Covenant on Civil and Political Rights*, open for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('*CRC*'); *Optional Protocol to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2001)('OP CRC').

Committee has been chosen as the example because, as discussed in Chapters One and Two, acts of SEA by UN peacekeeping personnel have predominately been perpetrated against women and girls and, due to this, the CEDAW Committee would be one of the treaty bodies most likely to receive complaints about SEA. In addition, as discussed in Chapter Three, the provisions within CEDAW provide a strong legal framework for the prohibition of many acts of SEA. Under CEDAW, all acts of sexual abuse and many acts of sexual exploitation are prohibited. This may be compared to other treaties, such as the ICCPR, the *International Covenant on Economic, Cultural and Social Rights* (ICESCR) and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* (CAT), which do not expressly prohibit SEA but which have general provisions which may apply to SEA under certain circumstances.

Hence, in this chapter, the CEDAW Committee will be used as an example to argue that the UN treaty bodies should be empowered with the competency to examine allegations of SEA against the UN. It will be demonstrated that this can be an effective, pragmatic, and economical approach to establishing the organisational accountability of the UN.

6.1 CEDAW and its Optional Protocol[5]

The adoption of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) by the UN General Assembly in 1979 has been one of the most significant achievements in women's human rights. CEDAW has provided women with protection against discrimination across a range of areas including in public or political life,[6] economic participation,[7] social or cultural practices,[8] and marriage and family relations.[9] CEDAW has

[5] See Appendix B and C.
[6] *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981) art 7 and 8 ('*CEDAW*').
[7] Ibid art 13.
[8] Ibid art 5.

also obligated State parties to 'take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.'[10] As discussed in Chapter Three, acts of SEA may violate various articles of CEDAW, such as article 1 (discrimination), article 5 (gender stereotypes), article 6 (trafficking and prostitution), article 11 (employment) and article 12 (right to health).

In 1999, CEDAW was further strengthened through the adoption of the Optional Protocol to CEDAW (OP CEDAW). The OP CEDAW provided the CEDAW Committee with the competence to receive and consider communications from individuals alleging a violation of their rights under CEDAW.[11] The adoption of the OP CEDAW generated much hope and enthusiasm.[12] For the first time, women were able to seek redress at an international level for a violation of their CEDAW rights and were able to hold State parties accountable for the acts or omissions which led to these violations.[13] Whilst some of this enthusiasm has been dampened by the significant number of communications declared inadmissible[14] and criticisms about the progressiveness of some decisions,[15] the CEDAW Committee has nonetheless rendered a number of important views on issues such as violence against women,[16] the right to reproductive health,[17] and the right to a fair trial.[18] The views

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[9] Ibid art 16.
[10] Ibid art 6.
[11] *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 10 December 1999, 2131 UNTS 83 (entered into force 22 December 1981) art 2 ('*OP CEDAW*').
[12] See, eg, Laboni Amena Hoq, 'The Women's Convention and its Optional Protocol: Empowering Women to Claim their Internationally Protected Rights' (2001) 32 *Columbia Human Rights Law Review* 677; Amnesty International, *Claiming Women's Rights: The Optional Protocol to the UN Women's Convention* (Amnesty International Publications, 2002).
[13] *OP CEDAW* art 2.
[14] Less than half the communications received by the CEDAW Committee have been declared admissible. See, eg, Donna J Sullivan, 'Overview of the Rule Requiring the Exhaustion of Domestic Remedies under the Optional Protocol to CEDAW' (Technical Papers No 1, International Women's Rights Action Watch Asia Pacific, 2009).
[15] See, eg, Jim Murdoch, 'Unfulfilled Expectations: The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women' (2010) 1 *European Human Rights Law Review* 26, 33.
[16] Committee on the Elimination of Discrimination Against Women, *Views: Communication No 2/2003*, 32nd sess, UN Doc CEDAW/C/36/D/2/2003 (26 January 2005) ('*AT v Hungary*'); Committee on the

rendered by the CEDAW Committee have also contributed to the jurisprudence on women's human rights in international law and to the understanding of what is required of State parties to fulfil their obligations under CEDAW.[19]

The CEDAW Committee will be used in this chapter as an example to demonstrate the potential role that the UN treaty bodies may have in establishing the organisational accountability of the UN for acts of SEA on peacekeeping operations. This may be achieved through empowering the CEDAW Committee with the competence to receive and consider communications from individuals against the UN, and by the UN voluntarily binding itself to both the human rights obligations in CEDAW and the communications procedure under the OP CEDAW. This would allow individuals who alleged a violation of their CEDAW rights, such as through acts of SEA, to submit a communication to the CEDAW Committee. The CEDAW Committee could then examine the matter and issue a view as to whether or not the UN has failed in its obligations under CEDAW. The views issued on the UN would, therefore, be similar to the views that the CEDAW Committee currently issues on States.

Elimination of Discrimination Against Women, *Views: Communication No 5/2005*, 39th sess, UN Doc CEDAW/C/39/D/5/2005 (6 August 2007) ('*Goekce v Austria*'); Committee on the Elimination of Discrimination Against Women, *Views: Communication No 6/2005*, 32nd sess, UN Doc CEDAW/C/39/D/6/2005 (6 August 2007) ('*Yildirim v Hungary*'); Committee on the Elimination of Discrimination Against Women, *Views: Communication No 20/2008*, 49th sess, UN Doc CEDAW/C/49/D/20/2008 (27 September 2011) ('*VK v Bulgaria*'); Committee on the Elimination of Discrimination Against Women, *Views: Communication No 32/2011*, 52nd sess, UN Doc CEDAW/C/52/D/32/2011 (28 August 2012) ('*Jallow v Bulgaria*').

[17] Committee on the Elimination of Discrimination Against Women, *Views: Communication No 4/2004*, 36th sess, UN Doc CEDAW/C/36/D/4/2004 (14 August 2006) ('*AS v Hungary*'); Committee on the Elimination of Discrimination Against Women, *Views: Communication No 22/2009*, 50th sess, UN Doc CEDAW/C/50/D/22/2009 (25 November 2011)('*LC v Peru*').

[18] Committee on the Elimination of Discrimination Against Women, *Views: Communication No 18/2003*, 46th sess, UN Doc CEDAW/C/46/D/18/2008 (16 July 2010) ('*Vertido v The Philippines*').

[19] For more, see Alda Facio, 'The OP-CEDAW as a Mechanism for Implementing Women's Human Rights: An Analysis of the First Five Cases Under the Communications Procedure of the OP-CEDAW' (Occasional Papers Series No 12, International Women's Rights Action Watch Asia Pacific, 2008) 12; Geeta Ramaseshan, 'The OP-CEDAW as a Mechanism for Implementing Women's Human Rights: An Analysis of Decisions Nos. 6 – 10 of the CEDAW Committee Under the Communications Procedure of the OP-CEDAW'(Occasional Papers Series No 13, International Women's Rights Action Watch Asia Pacific, 2009) 3.

6.2 The Benefits of Utilising the CEDAW Committee

There are a number of reasons why the CEDAW Committee may be a good forum for bringing allegations of SEA. First, the CEDAW Committee is comprised of twenty-three experts who are of 'high moral standing and competence in the field covered by the Convention.'[20] By being comprised of 'gender experts', the CEDAW Committee should be able to perform the gender analysis that is necessary to achieve a gender sensitive understanding of the issue before them. For example, the members of the CEDAW Committee would presumably have an understanding of the social, political, economic, and cultural inequalities between men and women, the patriarchal constructions of male and female sexuality, and the difficulty of negotiating sexual relations in situations embedded with power imbalances, which are often the circumstances under which acts of SEA are perpetrated.

The ability to incorporate a gender analysis into the determination of whether or not a human rights violation has occurred has already been demonstrated by the CEDAW Committee. For example, in *Vertido v The Philippines*, the CEDAW Committee found that the State party had violated, *inter alia*, article 5(a) (the obligation to eliminate gender stereotyped roles) by being influenced by gender-based myths about rape in the determination of the author's case.[21] The Committee held that '[i]t is clear from the judgement that the assessment of the credibility of the author's version of events was influenced by a number of stereotypes, the author in this situation not having followed… what the judge considered to be the rational and ideal response of a woman in a rape situation.'[22] These rape myths included that: a 'real' rape victim would resist the sexual attack at all times (whereas the author both resisted and submitted at different times);

[20] *CEDAW* art 17(1). Similar standards are required of the members of the other treaty bodies.
[21] *Vertido v The Philippines*, UN Doc CEDAW/C/46/D/18/2008, [8.9].
[22] Ibid [8.5].

women who are 'timid' and 'easily cowed' are more likely to be raped (whereas the author had a strong personality and worked as an Executive Director); and that a pre-existing relationship between the man and woman reduced the chance that the sexual act was non-consensual (in this case, the author alleged that she was raped by the President of her workplace).[23] In arriving at its view, the CEDAW Committee demonstrated that it was able to incorporate a nuanced gender analysis and an understanding of the patriarchal construction of male and female sexuality to make a progressive judgment on the matter before them. In regard to allegations of SEA, the issue is similarly embedded with many gender-based myths and gender-stereotyped roles about men and women.[24] Therefore, the CEDAW Committee would possess the gender expertise that is necessary to examine allegations of SEA against women by UN peacekeeping personnel.

A second benefit of providing the CEDAW Committee with the competence to consider communications against the UN is that it provides an avenue through which victims and survivors may obtain a sense of justice. The CEDAW communications procedure may offer a 'space' for survivors of SEA to be heard and to have their allegations acknowledged and assessed in a public forum. If the Committee finds that the obligations under CEDAW have been breached, the Committee may also provide recommendations for remedy or reparation. The right to an effective remedy for survivors of human rights violations is enshrined in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles).[25] The forms of remedy or reparation suggested in the Basic Principles include: restitution to restore the victim to her original

[23] Ibid [8.5]–[8.6].
[24] See Chapter Three, s 3.4.1.
[25] *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* GA Res 60/147, UN GAOR, 60th session, 64th plen mtg, Supp No 49, UN Doc A/RES/60/147 (21 March 2006, adopted 16 December 2005).

situation before the violation occurred; compensation for any economically assessable damage; rehabilitation including any medical or psychological care that is required; satisfaction through means such as the verification of facts or a public apology; and guarantees of non-repetition.[26]

As opposed to judicial bodies, UN treaty bodies such as the CEDAW Committee are also in the unique position of being able to make recommendations that are broader than individual remedies and which can include recommendations for structural or systemic change. Hence, the CEDAW Committee is able to offer both a proactive, as well as a reactive, approach to the human rights violations under its consideration. For example, in *Vertido v The Philippines*, the CEDAW Committee made recommendations for the State party to review its judicial proceedings, to review domestic legislation, and to provide gender-awareness training for public authorities such as judges, lawyers, law enforcement officers, and medical personnel.[27] Hence, the Committee provided the State party with recommendations on how to prevent the reoccurrence of this human rights violation in the future.

The CEDAW Committee's ability to provide recommendations for structural changes may also be beneficial to the UN. Through considering a particular case of SEA in detail, the CEDAW Committee may be able to determine the actions or omissions that may have led to that incident of SEA and, therefore, to provide specific recommendations on how that

[26] Ibid art 15–23. Remedy and reparation have been recognised as important measures to support the recovery of survivors of SEA. See, for example, Catherine Sweetser, 'Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel' (2008) 83(5) *NYU Law Review* 1643. The benefits of remedy and reparation for SEA have also been recognised in non-peacekeeping contexts, for example, for survivors of trafficking (see, eg, Theodore R Sangalis, 'Elusive Empowerment: Compensating the Sex Trafficked Person under the Trafficking Victims Protection Act' (2011-2012) 80 *Fordham Law Review* 403), and for survivors of child sexual abuse (see, eg, Jennifer Rothman, 'Getting What They Are Owed: Restitution Fees for Victims of Child Pornography' (2010-2011) 17 *Cardozo Journal of Law & Gender* 333).
[27] *Vertido v The Philippines*, UN Doc CEDAW/C/46/D/18/2008 [8.9].

incident, or future incidences, may be prevented. For example, the Committee may make recommendations regarding training, managerial competencies or oversight, patriarchal culture or attitudes, or disciplinary regimes. This may be compared to, for example, setting up a compensation tribunal which would only focus on providing redress to victims and survivors. Therefore, the communications procedure may provide invaluable information to the UN on how to prevent SEA in the future.

The UN's willingness to be held accountable through the CEDAW Committee will also contribute to restoring the Organisation's credibility and reputation. Over a decade of allegations of SEA have damaged the reputation of the UN and have tainted its peacekeeping operations. This has been compounded by the fact that these allegations continue to occur and that more cases are confirmed by the UN every year.[28] If, however, the UN was willing to allow its operations to be scrutinised by an independent panel of experts; if it was willing to submit itself to the same processes that it expects of States; and if it was willing to be assessed against the same values that it itself proclaims to advance, then this willingness to be accountable for its actions will go a long way towards re-establishing its credibility and reputation. The voluntary submission by the UN to the CEDAW communications procedure may be a good step in this direction.

Another benefit of establishing the organisational accountability of the UN through the CEDAW Committee is that this solution respects the UN's immunity. The concerns about dismissing the UN's immunity, such as that this would potentially subject the UN to the prejudices of domestic courts or to the widely varying laws of different States,[29] would not be a problem. The UN would be subjected to only one set of laws which would be the human

[28] See Chapter Two.
[29] Hugh McKinnon Wood, 'Legal Relations between Individuals and a World Organization of States' (1944) 30 *Transactions of the Grotius Society* 141, 143-144.

rights obligations enshrined in CEDAW. The UN would also only be subjected to the judgment of one independent panel of experts who serve in their personal capacity and not as representatives of their State.[30] The composition of the CEDAW Committee, with its 'equitable geographical distribution' and representation of 'different forms of civilization… [and] legal systems'[31] would reduce any legal or political biases against the UN. Hence, in this case the UN would be subjected to a fair and transparent assessment process against a set of pre-determined obligations by a panel of independent experts.

Finally, voluntary submission by the UN to the CEDAW communications procedure is a practical and economical solution that is relatively easy to implement. The CEDAW communications procedure is a mechanism that is already available and functioning and, therefore, does not require the establishment of any new bodies or processes. This may be compared to, for example, some of the solutions proposed in relation to the legal accountability of the alleged perpetrator, such as the creation of a new international treaty[32] or the establishment of a tri-hybrid court comprised of the UN, the host State, and the sending State.[33] Whilst these proposals may be effective and may form part of the solution, they are also much more resource intensive and require time to be established and become functional. The proposal made in this thesis may require some additional resourcing for the CEDAW Committee to handle a potentially increased workload and some formal arrangements will be needed to establish this process. However, empowering the CEDAW Committee with the competence to consider communications against the UN is an expedient, economical, and pragmatic option. The laws, the structures, the processes, and the people are already in place. And whilst the examination of SEA by the UN would involve

[30] *CEDAW* art 17(1).
[31] Ibid.
[32] Prince Zeid Ra'ad Zeid Al-Hussein, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, UN Doc A/59/710 (24 March 2005) ('*Zeid Report*').
[33] Roisin Burke, 'UN Military Peacekeeper Complicity in Sexual Abuse: The ICC or a Tri-hybrid Court' in Morten Bergsmo (ed), *Thematic Prosecution of International Sex Crimes* (Torkel Asphal, 2012).

the consideration of some additional issues, these issues are not far removed from the issues that the CEDAW Committee has already considered.

In sum, the actions that the UN has already taken to address the issue of SEA demonstrate that the UN is sincere in its commitment to find a solution to this problem. However, the problem continues to persist, which also demonstrates that it may be time for the UN to become broader and bolder in its approach to the problem. The communications procedure of the CEDAW Committee may not only provide justice for survivors but may also provide the UN with the insight needed to prevent SEA in the future and to help restore the UN's reputation and legitimacy. Hence, the communications procedures of the UN treaty bodies may be a viable, effective, and pragmatic alternative to establishing the organisational accountability of the UN.

6.3 Expanding the Scope of the Communications Procedure

As discussed, UN treaty bodies are currently unable to consider communications from individuals against international organisations such as the UN. Using the example of the CEDAW Committee, this section will examine the changes that will be needed to establish this process. These changes include: first, the recognition of acts of SEA as falling within the scope of CEDAW; second, the recognition of the UN as an 'obligation bearer' under CEDAW; and, third, expanding the competency of the CEDAW Committee to be able to consider communications against the UN.

i) The Recognition of Sexual Exploitation and Abuse as a Form of Discrimination Against Women

For the CEDAW Committee to be able to consider the matter of SEA, acts of SEA need to be recognised as a violation of the rights enshrined in CEDAW. At present, SEA is not expressly

prohibited in CEDAW. However, as the example of violence against women demonstrates, the 'broad and far-reaching language'[34] of CEDAW enables the Convention to be interpreted to support the progressive development of women's human rights.

Since the adoption of CEDAW, the understanding of women's human rights has expanded significantly. For example, although violence against women (VAW) is not expressly prohibited in CEDAW, it is now widely accepted as a violation of the rights enshrined therein. This is evident in the CEDAW Committee's General Recommendation No 19 on 'Violence Against Women' which defines 'discrimination' as including gender-based violence.[35] This has also been recognised by the General Assembly in the *Declaration on the Elimination of Violence Against Women* (DEVAW)[36] which calls on States to, *inter alia*, 'exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.'[37] Furthermore, this obligation has been repeated at the Fourth World Conference on Women and is contained in the *Beijing Platform for Action*.[38]

In its communications procedure, the CEDAW Committee has accepted that violence against women, and specifically, domestic violence, falls within the purview of CEDAW. In *AT v Hungary,* the Committee affirmed that the obligations under articles 2(a), (b) and (e)[39]

[34] Jim Murdoch, 'Unfulfilled Expectations: The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women' (2010) 1 *European Human Rights Law Review* 26, 33.
[35] Committee on the Elimination of Discrimination Against Women, *General Recommendation No 19: Violence Against Women*, 11th sess, UN Doc HRI/GEN/1/Rev.9 (Vol.II) (1992) ('*General Recommendation No 19*').
[36] *Declaration on the Elimination of Violence Against Women,* GA Res 48/104, UN GAOR, 85th plen mtg, UN Doc A/RES/48/104 (20 December 1993) art 4 ('*DEVAW*').
[37] *DEVAW*, UN Doc A/RES/48/104, art 4(c).
[38] *Beijing Declaration and Platform for Action*, UN Doc A/CONF.177/20/Rev.1 15 (adopted December 1995) art 125(b).
[39] *CEDAW* art 2(a), (b) and (e).
Article 2 of CEDAW provides that:

extend to include the protection and prevention of violence against women and that failure to do so constituted a human rights violation.[40] The Committee also recognised that 'traditional attitudes by which women are regarded as subordinate to men contribute to violence against them'[41] and found violations of article 5(a) (eliminating gender stereotypes) and article 16 (equality in family life). Following *AT v Hungary*, the CEDAW Committee has issued several more views that affirm that acts of domestic violence constitute a violation of CEDAW.[42] These findings have been made despite the fact that no provision in CEDAW expressly addresses violence against women. Nonetheless, the CEDAW Committee has interpreted the general provisions in CEDAW as being applicable to domestic violence.

A similar development may occur with the recognition of acts of SEA as a form of discrimination against women and a violation of the CEDAW. It may be argued that many acts of SEA fall within the definition of discrimination in article 1 as these acts are a 'distinction… made on the basis of sex which [have] the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women… of human rights and fundamental freedoms.'[43] SEA is not only experienced by women in grossly disproportionate numbers but women are targeted *because they are women* for acts of SEA.

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

[40] *AT v Hungary*, UN Doc CEDAW/C/36/D/2/2003, [9.3].
[41] Ibid [9.4].
[42] *AT v Hungary*, UN Doc CEDAW/C/36/D/2/2003; *Goekce v Austria*, UN Doc CEDAW/C/39/D/5/2005; *Yildirim v Hungary*, UN Doc CEDAW/C/39/D/6/2005; *VK v Bulgaria*, UN Doc CEDAW/C/49/D/20/2008; *Jallow v Bulgaria,* UN Doc CEDAW/C/52/D/32/2011.
[43] *CEDAW* art 1.

As discussed in Chapter Three, it may also be argued that acts of SEA violate other rights enshrined within CEDAW, such as the right to health and family planning (article 12), the elimination of gender-stereotyped roles (article 5), and the obligation to suppress all forms of traffic in women and exploitation of prostitution of women (article 6).

Similar to violence against women, the acceptance of SEA as a form of discrimination against women may be articulated through a General Recommendation by the CEDAW Committee, like General Recommendation No 19, or by a declaration by the General Assembly, similar to DEVAW.

ii) The Recognition of the United Nations as an Obligation Bearer under CEDAW

The second change that is needed to enable the CEDAW Committee to consider communications against the UN is for the Organisation to be recognised as an 'obligation bearer' under CEDAW. As discussed in Chapter Four, the principle that international organisations have both legal rights and responsibilities has been widely accepted.[44] The responsibilities of the UN have been recognised, for example, by the International Court of Justice (ICJ) which has held that '[t]he United Nations may be required to bear responsibility for the damage arising from [its] acts'[45] and by the UN itself which has accepted that '[t]he international responsibility of the United Nations for the activities of United Nations forces is an attribute of its international legal personality and its capacity to bear international rights and obligations.'[46]

[44] See Chapter Four.
[45] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (Advisory Opinion) [1999] ICJ Rep 62, 88-89 [66].
[46] *Financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Peace Forces headquarters*, UN GAOR, 51st sess, Agenda Item 129 and 140(a), UN Doc A/51/389 (20 September 1996) [6].

To enable the CEDAW Committee to consider communications against the UN, the UN needs to be recognised as an actor that has obligations under CEDAW. As discussed in Chapter Five, the UN is currently unable to become a party to any international human rights treaty, including CEDAW. Therefore, some other action is needed for the UN to become 'bound' to the obligations within CEDAW. Whilst amendments may be made to the treaty to allow for UN accession, this would be a laborious task requiring significant political commitment from State parties. A more pragmatic and achievable alternative may be to take the same approach that the UN has taken to become 'bound' to the obligations under international humanitarian law, which was through the issuance of a Secretary-General bulletin. The issuance of a Secretary-General bulletin would not bind the UN to CEDAW through the creation of an international law to that effect, but the obligations in the bulletin would nonetheless form part of the UN's 'internal law' and would be binding upon the UN as an organisation. Therefore, through taking this action the UN can commit itself to upholding the human rights obligations within CEDAW and, conversely, may be held accountable for failing to fulfil its obligations under CEDAW.

iii) Empowering the CEDAW Committee with the Competence to Receive Communications from Individuals Against the United Nations

In addition to being bound by the human rights obligations under CEDAW, the UN also needs to become 'bound' to the communications procedure under the OP CEDAW. This may also be achieved through the issuance of a Secretary-General bulletin. The bulletin could promulgate the UN's acceptance that it will come within the 'personal jurisdiction' of the CEDAW Committee in accordance with article 1 of the OP CEDAW.[47] The CEDAW Committee must also accept that if a communication against the UN meets all of the admissibility criteria (e.g. exhaustion of domestic remedies, subject-matter jurisdiction, temporal

[47] *OP CEDAW* art 1.

jurisdiction),[48] then it will accept the communication and examine the communication on its merits.

The acceptance of communications against the UN would require the CEDAW Committee to broaden the scope of the issues which it has examined thus far. UN treaty bodies have traditionally assessed the relationship between a State and private individuals. The proposal in this thesis will require the CEDAW Committee to extend its assessment to the relationship between an international organisation and private individuals. The relationship between the UN and the individual will have an impact on the human rights obligations that the UN has to 'respect, protect, and remedy'. For example, the ability of the UN to respect and protect human rights may be quite different if the UN has responsibility over the administrative, judicial, and law enforcement bodies of a territory compared to if the UN only had a very specific role, such as the provision of food aid. From the assessment of the relationship between the UN and the individual, the CEDAW Committee may be able to determine the obligations that were owed to the individual and, from there, to determine whether these obligations were or were not fulfilled. The CEDAW Committee could then issue a view on its findings and, if a violation is found, provide recommendations for remedies and/or for structural or systemic changes to prevent the reoccurrence of the violation in the future.

In sum, three changes are required to enable the CEDAW Committee to examine allegations of SEA against the UN. First, SEA needs to be recognised as a form of discrimination against women and as a violation of the rights enshrined in CEDAW. Second, the UN needs to be recognised as an 'obligation bearer' under CEDAW. Third, the CEDAW Committee needs to be empowered with the competence to receive and consider individual communications

[48] *OP CEDAW* art 4.

against the UN. Whilst all of these actions require a change to the status quo, none of these changes are so drastic that they are practically, economically, or politically unfeasible.

6.4 The Communications Procedures of other UN Treaty Bodies

Whilst this chapter has considered the example of the CEDAW Committee in resolving complaints of SEA against UN peacekeeping personnel, the proposal in this thesis may also be applied to other UN treaty bodies with communications procedures.

Similar to the CEDAW Committee, expanding the competency of other UN treaty bodies to accept communications against the UN would bring benefits such as: utilising the specific expertise of the Committee to assess allegations of SEA; providing an avenue for survivors to seek justice; providing the UN with recommendations to prevent the reoccurrence of SEA; restoring the Organisation's reputation and credibility; respecting the UN's immunity; and offering a solution that is practical and economical.

Similarly to the CEDAW Committee, the same changes will be needed to enable other UN treaty bodies to consider allegations against the UN. These are that: acts of SEA need to be recognised as a violation of one or more of the rights enshrined within the respective human rights treaty of the UN treaty body; the UN needs to be recognised as an 'obligation bearer' under that respective human rights treaty; and the UN treaty body needs to empowered with the competence to accept and examine communications against the UN.

For example, children may be able to submit their allegations of SEA to the CRC Committee whose communications procedure recently came into force on 14 April 2014.[49] The

[49] United Nations Office of the High Commissioner for Human Rights, 'Children can now lodge complaints with the UN about violations of their rights' (Media Release, 14 April 2014) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14503&LangID=E>. Last

expertise of the CRC Committee on children's human rights would make it an effective body to deal with allegations of SEA against children. In addition, as discussed in Chapter Three, international human rights law provides a thorough legal regime which prohibits all acts of SEA against children.[50] Hence, the CRC Committee may be even more effective than the CEDAW Committee in dealing with the issue of SEA due to the extensive prohibitions against child SEA that it has at its disposal.

In regard to acts of SEA against adult men, men do not have a 'specialist' UN treaty body to which they can submit their allegations. Instead, it may be possible for men to submit their allegations to the Human Rights Committee as a violation of, for example: the right to privacy and freedom from attacks on one's honour (article 17); the right to freedom from torture or cruel, inhuman or degrading treatment (article 7); or the right to freedom from slavery, servitude or force labour (article 8).[51] Alternatively, the allegation may be submitted to the Committee against Torture if the act meets the elements of torture or cruel, inhuman or degrading treatment;[52] the Committee on the Elimination of Racial Discrimination if the act was racially motivated;[53] the Committee on the Rights of Persons with Disabilities if the survivor was a person with a disability;[54] or the Committee on Economic, Social and Cultural Rights as a violation of the right to the highest attainable standard of physical and mental health.[55] Women and children may also submit their allegations of SEA to these UN treaty bodies. Although these UN treaty bodies may not be as

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Accessed: 12 August 2014.

[50] *CRC*; *OP CRC*. See also, *C182 Worst Forms of Child Labour Convention*, opened for signature 17 July 1999, C182 (entered into force 19 November 2000). However, the CRC Committee does not oversee this treaty.

[51] *ICCPR* art 7, 8 and 17.

[52] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, open for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

[53] *International Convention on the Elimination of All Forms of Racial Discrimination*, open for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

[54] *Convention on the Rights of Persons with Disabilities*, open for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008).

[55] *International Covenant on Economic, Social and Cultural Rights*, open for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976) art 12.

'specialised' to deal with the issue of SEA as the CEDAW Committee or the CRC Committee, it may be possible for these UN treaty bodies to draw on the jurisprudence and the expertise of the CEDAW Committee or the CRC Committee to resolve allegations of SEA or to develop their own jurisprudence on SEA as a violation of the rights contained within their respective treaty. Hence, there may be a range of options available for men, women and children to submit their allegations of SEA to the UN treaty bodies depending upon the nature and circumstances of the act.

6.5 Concerns and Criticisms

The proposal in this chapter regarding the potential role of the UN treaty bodies is not a proposal which has been considered widely. There may, understandably, be a number of concerns and criticisms. These concerns will be addressed in this section to demonstrate that this proposal may indeed be a viable, pragmatic, and effective solution to establishing the accountability of the UN.

One concern that may be raised is that UN treaty bodies were not set up to consider complaints against international organisations. All of the obligations enshrined within international human rights treaties were intended for States. It may be argued that UN treaty bodies may not possess the capacity or competency to assess allegations against the UN, especially as allegations of human rights violations by non-State actors is still a complex and unsettled area of international law.

Whilst these are all legitimate concerns, one must keep in mind that international law, in theory and practice, is not and has never been a static area of law. In fact, international law has progressed, expanded, and changed significantly in the past few decades, particularly since the establishment of the UN. The ICJ has itself acknowledged that '[t]hroughout its

history, the development of international law has been influenced by the requirements of international life.'[56] Hence, the assertion that something should not be so because it has not been so before is not a sufficient argument in and of itself.

Regarding the competency of UN treaty bodies to examine the actions or omissions of the UN, an example of this has already occurred. In 2004, the Human Rights Committee made a request to examine a subsidiary organ of the UN, the United Nations Interim Administration Mission in Kosovo (UNMIK), in regard to its role in protecting and promoting the human rights of the people of Kosovo.[57] UNMIK accepted the request and submitted a report to the Human Rights Committee in 2006, and then submitted comments to the Committee's Concluding Observations of its report in 2008.[58] Hence, the competency of the Human Rights Committee to scrutinise the actions of UNMIK demonstrates that the proposal that other UN treaty bodies may also have the competency to scrutinise the activities of UN peacekeeping operations is not that far-fetched.

A second criticism that can be made concerns the processes and authority of the views issued. The UN treaty bodies are not a court but, rather, are quasi-judicial bodies. The UN treaty bodies do not administer an adversarial or inquisitorial system to hear matters alleging the violations of international law, and there exist no guarantees of due process or a fair trial. There are no appearances before many of the Committees to plead or defend

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[56] *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174, 8.

[57] Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee Serbia and Montenegro*, 81st sess, UN Doc CCPR/CO/81/SEMO (12 August 2004) [2].

[58] Human Rights Committee, *Report Submitted by the United Nations Interim Administration Mission in Kosovo to the Human Rights Committee on the Human Rights Situation in Kosovo Since 1999*, UN Doc CCPR/C/UNK/1 (13 March 2006); Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Comments by the United Nations Interim Administration Mission in Kosovo (UNMIK) on the Concluding Observations of the Human Rights Committee*, UN Doc CCPR/C/UNK/CO/1/Add.1 (1 April 2008).

one's case.[59] Instead, the process is based on a series of written submissions. The views issued by the UN treaty bodies are not binding and there are no enforcement mechanisms to ensure compliance with the Committee's recommendations. Therefore, compared to other judicial bodies, such as the ICJ, the International Criminal Court (ICC), the European Court of Human Rights (ECtHR), and domestic court systems, the UN treaty bodies are not strictly 'legal' and provide a much weaker form of justice.

While all of these criticisms are legitimate, they are not criticisms of the proposal put forth in this thesis *per se*. Instead, they are criticisms of the UN treaty bodies in general. The same criticisms may be made of the views currently issued by the UN treaty bodies on States, that is, the system is only 'quasi-judicial', there are no guarantees of due process, and the views issued are non-binding and have no enforcement mechanisms. Therefore, these are problems inherent in the UN treaty bodies as a system and need to be addressed through a broader and separate process.

Despite these limitations, the views issued by the UN treaty bodies are still important. The views may be important to the applicant, who may receive declaratory relief, remedy, or personal satisfaction through initiating systemic or structural changes. The views may be of value to the UN, which may receive recommendations for the prevention of SEA in the future. Lastly, the views issued may be valuable to civil society and may serve as an assurance that justice has been done. In addition, the views of the UN treaty bodies will contribute to building the international jurisprudence on SEA and may set precedents for

[59] Only two UN treaty bodies have provisions for oral hearings in their Rules of Procedure. These are the Committee against Torture under Rule 117 and the Committee on the Rights of the Child under Rule 19.
See, Committee against Torture, *Rules of Procedure*, UN Doc CAT/C/3/Rev.6 (13 August 2013); Committee on the Rights of the Child, *Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure,* UN Doc CRC/C/62/3 (16 April 2013).
However, oral hearings are extremely rare. One example in which the CAT Committee allowed oral presentations by the State and the complainant's counsel is Committee against Torture, *Communication No 444/2010*, UN Doc CAT/C/48/D/444/2010 (1 June 2012) ('*Abdussaatov and ors v Kazakhstan*').

the future. Therefore, the views that may be issued by the UN treaty bodies on the UN will have no more, and no less, of an impact than the views that the Committees currently issue on States.

In regard to the concern about the lack of enforcement mechanisms and the possibility of non-compliance, this is a legitimate concern considering the significant level of non-compliance by States.[60] However, this criticism is only relevant if the UN ignores or refuses to follow the recommendations that it have been issued. It may be argued that the high moral standing espoused by the Organisation should make this less of a concern for the UN than it currently is for States. If the UN was to fail to comply with this process, then this would significantly weaken the power and legitimacy of the UN to call on States to comply with the UN treaty body system. It is unlikely that the UN would want to place itself in such a compromised position. Hence, the presumption of non-compliance should not necessarily be made at this early stage nor should it be a presumption that should defeat the proposal made in this thesis.

Another criticism may be that the solution proposed is not taking a strong enough stance against SEA. The 'legal accountability' that may be established through the UN treaty bodies pales in comparison to undertaking proceedings against the UN before international, regional, or domestic courts. As discussed, the authority of the views issued by the UN treaty bodies is significantly less than the authority of the judgments rendered by a court. Therefore, being subject to the communications procedures of the UN treaty bodies is, in

[60] For example, it has been reported that the Human Rights Committee has only received 54 satisfactory responses from States from the finding of 474 violations, and that the CERD Committee has received only four satisfactory responses by States from the finding of 20 violations. See Geir Ulfstein, 'Individual complaints' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012) 73, 104-105.

some ways, an 'easy way out' for the gross misconduct that has occurred on UN peacekeeping operations.

The aim of this thesis, however, is to propose a solution that is not only effective but also pragmatic and possible. Whilst it is preferable that the UN should be subjected to the 'tougher' and more authoritative proceedings of international or domestic courts, Chapter Five has clearly demonstrated that there are a number of potentially insurmountable obstacles to achieving this, such as limitations *ratione personae* and *ratione material* and the UN's legal immunities. On the other hand, if it is recognised that these legal obstacles are indeed insurmountable and, instead, a proposal is made to establish a new court or tribunal to try the UN, then this raises further economic and practical difficulties as the establishment of a new international judicial process is a costly and lengthy exercise.

Another consideration is that the motivation behind this thesis is not to find a way to 'punish' the UN. Whilst strongly condemning the occurrence of SEA and acknowledging the legitimate criticisms that have been made of some peacekeeping operations, the work of the UN has been invaluable in promoting international peace and stability. The UN should be supported and encouraged to improve its peacekeeping operations. Therefore, the main consideration of this thesis is how to empower survivors of SEA to achieve justice and how to support the UN to prevent the reoccurrence of SEA. This will only occur with a proposal that is pragmatic, economical, and possible. Therefore, whilst aiming for a higher level of legal accountability is admirable, a solution that is not actually feasible is, in practical terms, not really a solution at all.

Lastly, it may be argued that the UN would simply not agree to participate in the communications procedures of the UN treaty bodies. However, this argument cannot be

made with any certainty. As discussed in Chapter Two, the UN has already made many efforts to eliminate SEA. The UN has demonstrated through its words and its actions that it is sincere in its commitment to end this problem. As the former UN Secretary-General, Kofi Anan, has stated, '[s]exual exploitation and abuse by peacekeeping personnel must first be eliminated and then prevented from happening again.'[61]

In addition, the UN has demonstrated that it is open to suggestions by the UN treaty bodies to be a part of their procedures, such as in the case of the Human Rights Committee and UNMIK. In its cooperation with the Human Rights Committee, the UN has recognised that UNMIK did have obligations in regard to the human rights situation in Kosovo and, as such, that UNMIK should be a part of the human rights reporting process. Hence, the UN may similarly be open to other suggestions by the UN treaty bodies.

The UN's continuing struggle to adequately address the occurrence of SEA may, therefore, make it receptive to the proposal to involve the various UN treaty bodies. In this case, the fact that the procedures of the UN treaty bodies are 'only' quasi-judicial and 'softer' than being subject to judicial proceedings may encourage the UN to be more amenable to the idea. As discussed, this proposal may also benefit the Organisation, such as through restoring its reputation and legitimacy and by providing the UN with recommendations for systemic and structural changes to prevent the reoccurrence of SEA. Therefore, the proposal of this thesis should not be dismissed simply on the basis that the UN might refuse to cooperate.

[61] Zeid Report, above n 32, 1-2.

6.6 Conclusion

The UN has come a long way since allegations of SEA by peacekeeping personnel first surfaced more than a decade ago. Investigations have been undertaken, codes of conduct have been amended, training has been implemented, and individual perpetrators have been dismissed from service. The UN's stance against SEA has been strong, yet each year the Organisation continues to receive allegations of SEA. Despite the widespread condemnation of these violations, in Chapter Five it was demonstrated that the current legal system does not work in favour of individuals who have suffered SEA at the hands of UN peacekeeping personnel. At all levels – international, regional, and domestic – individuals face potentially insurmountable obstacles to obtaining justice.

Empowering the UN treaty bodies, such as the CEDAW Committee, to be able to consider communications against the UN may be one way of establishing the organisational accountability of the UN. Whilst the communications procedures of the UN treaty bodies will clearly not resolve the problem of SEA in its entirety, it may be one part of a broader set of approaches that works towards eliminating the occurrence of SEA on peacekeeping operations. As quoted in Chapter Four, '[i]t would, after all, be extremely disruptive for the international system to tolerate the presence of actors that are endowed with legal personality… but are exempt from a body of universally or almost universally accepted rules.'[62] It is now the responsibility of the international community to ensure that the UN is not such a legal entity and that it is no longer exempt from assuming legal responsibility for the acts of SEA that have been committed on its peacekeeping operations.

[62] Guglielmo Verdirame, *The UN and human rights who guards the guardians?* (Cambridge University Press, 2011) 71.

CHAPTER 7

Conclusion

The occurrence of sexual exploitation and abuse (SEA) on UN peacekeeping operations is a complex problem. It is a problem embedded with gender and economic inequalities, patriarchal beliefs about men and women's sexuality, the hyper-masculinised culture of war, the breakdown of community support structures, and the logistical difficulties of commanding soldiers trained by different States to uphold the vision and values of the United Nations (UN). The UN must be commended for the actions that it has already taken to tackle the problem of SEA and its sincere and deep commitment to addressing the problem. However, the problem continues to occur and cause significant damage to victims and survivors, to the success of peacekeeping operations, and to the UN's reputation and credibility.

Many different approaches have been taken by the UN, activists, and academics to address the problem of SEA. Amongst these approaches, the issue of who should be held legally responsible for these violations has been important. In particular, the responsibility of the individual perpetrator and the State from which the alleged perpetrator came has been of consideration. An area of responsibility that has received less attention has been the organisational accountability of the UN. Hence, this is the area of responsibility that has been the focus of this thesis.

In this chapter, a conclusion to the thesis will be presented. A brief synthesis of the arguments made thus far will be provided and the definition of 'legal accountability' presented in Chapter One will be revisited to discuss how the proposal put forth in this thesis has fulfilled the key criteria of accountability. Then, the potential areas for future

research will be explored. It will be acknowledged that the problem of and solution to SEA is much broader than the focus of this thesis and that further research and action is needed to fully eliminate the occurrence of SEA on UN peacekeeping operations.

7.1 The Contribution of This Thesis

The research question addressed in this thesis has been:

> How can the organisational accountability of the United Nations be established for acts of sexual exploitation and abuse committed by UN personnel on its peacekeeping operations?

The discussion in Chapter One introduced the problem of SEA on UN peacekeeping operations. The definition of SEA contained within the 2003 Bulletin was provided and the scope of the prohibitions in the 2003 Bulletin was discussed.[1] The research question was presented and the focus on organisational accountability was explained and justified. The limitations of the research were also outlined.

In Chapter Two, the background information and 'facts and figures' to the problem of SEA on peacekeeping operations were presented. This included an overview of the official investigations conducted by the UN and the actions taken by the Organisation to address the problem of SEA. The discussion demonstrated that the issue of SEA was a widespread, systemic, and ongoing problem that was worthy of further research, debate, and action.

In Chapter Three, the best international legal regime for framing acts of SEA as a violation of international law was identified. It was demonstrated that international criminal law was useful for the interpretation of 'sexual abuse' and that the international law on human

[1] Kofi A Annan, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003).

trafficking was useful for understanding the concept of 'sexual exploitation'. However, it was argued that international human rights law, with its broad scope and application, provided the most promising legal framework for encompassing most of the acts of SEA as defined in the 2003 Bulletin. Hence, it was established that the thesis would proceed with the understanding that framing acts of SEA as a violation of human rights was the best way to argue that these acts were also a violation of international law.

In Chapter Four, the issue of whether international organisations, such as the UN, actually had any responsibilities under international law was considered. The UN's international legal personality and its legal rights and responsibilities were discussed. The potential sources of law from which to draw the UN's legal responsibilities were explored, including its internal law, domestic law, and international law. Then, the *Articles on the Responsibility of International Organizations* (ARIO) was examined. It was demonstrated that while there may be difficulties in establishing the legal responsibility of the UN for acts of SEA under the ARIO, this thesis would proceed with the principle that international organisations should bear responsibility for internationally wrongful acts, which is the principle upon which the ARIO was founded.

In Chapter Five, the practical application of this principle was examined. It was demonstrated that holding the UN to account in the current legal system was a challenging, difficult and, at times, impossible task. Several limitations to being able to hold the UN legally accountable were identified. First, the *lex lata* is clear that the UN is not and cannot be bound to any international human rights treaty. Second, limitations *ratione personae* and *ratione materiae* prevent the UN and/or the matter of SEA from falling within the jurisdiction of international and regional courts. Third, the extensive legal immunities enjoyed by the Organisation makes it difficult for survivors to pursue legal action against

the UN through domestic courts. Hence, survivors of SEA face significant and potentially insurmountable obstacles to being able to hold the UN to account within the current legal system.

Taking these obstacles into consideration, the discussion in Chapter Six sought to move beyond the traditional means of seeking justice to consider other forums through which the UN's accountability may be pursued. Building upon the argument that international human rights law provides the best legal framework for the purposes of this thesis, the potential role of the UN treaty bodies was considered. The discussion in Chapter Six demonstrated that the communications procedures of the UN treaty bodies may be a viable alternative process through which to assess the UN's responsibility for acts of SEA on its peacekeeping operations.

Using the Committee on the Elimination of Discrimination against Women (CEDAW Committee) as an example, the benefits to both individual survivors and the UN were outlined. These benefits included: providing a sense of justice and remedy for survivors; providing the UN with recommendations for structural and systemic changes to prevent the reoccurrence of SEA; assisting to restore the UN's reputation and legitimacy; building the international jurisprudence on SEA; and demonstrating to global civil society that the UN is also subject to the rule of law and must take responsibility for its wrongful actions.

Then, the discussion examined the changes that would be needed to empower the CEDAW Committee with the competence to receive allegations against the UN. It was proposed that the necessary changes were: the recognition of acts of SEA as falling within the scope of CEDAW; the recognition of the UN as an 'obligation bearer' under CEDAW; and the extension of the 'personal jurisdiction' of the CEDAW Committee to include the UN. It was

also noted that similar changes could be made to other UN treaty bodies to empower them to receive complaints of SEA against the UN as well.

Finally, it was argued that expanding the role of the UN treaty bodies is an effective, pragmatic, and economical approach to dealing with allegations of SEA. It was argued that this was a realistic solution in face of the constraints of the current legal system and the limited political will and financial resources available to deal with the problem. Hence, the unique contribution of this thesis was to present a new and innovative solution to being able to establish the organisational accountability of the UN for acts of SEA on its peacekeeping operations.

7.2 Achieving Accountability through the UN Treaty Bodies

The concept of accountability has been described as 'any mechanism that makes powerful institutions responsive to their particular publics.'[2] Hence, the notion of accountability has become an important means through which modern institutions have been able to demonstrate their legitimacy and integrity. The achievement of accountability has also come to signify the positive intentions, actions, and/or state of affairs of an institution.[3]

As discussed in Chapter One, the notion of accountability has been 'an essentially contested and contestable concept.'[4] Most definitions of accountability, however, have included several key characteristics. These characteristics are:

- an agent or institution who is to give an account;

- an area or domain subject to accountability;

- an agent or institution to whom the agent is to give account;

[2] Richard Mulgan, *Holding Power to Account: Accountability in Modern Democracies* (Pelgrave, 2003) 8.
[3] Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) *European Law Journal*, 450.
[4] Ibid.

- the right of the institution to require the agent to explain or justify decisions with regard to the domain of accountability; and,
- the right of the institution to sanction the agent if the agent fails to explain decisions with regard to the domain of accountability.[5]

In this thesis, the legal accountability of the UN for acts of SEA committed on its peacekeeping operations was considered. In regard to the defining characteristics of accountability, the proposal put forth in this thesis, using the example of the CEDAW Committee, fits the criteria as follows:
- the UN as the institution that is to give an account;
- the obligations under CEDAW as the area of accountability;
- the CEDAW Committee as the institution to which the UN is to give an account to;
- the communications procedure of the Optional Protocol to CEDAW (OP CEDAW) as the process through which the right of the CEDAW Committee to require the UN to explain its decisions is established; and,
- the communications procedure as the process that provides the CEDAW Committee with the right to issue recommendations to the UN if the Organisation has failed in its domain of accountability.

It is noted that the final point differs from the characteristic of accountability identified above. This is due to the limited authority of the CEDAW Committee which prevents it from issuing sanctions and only enables it to provide recommendations. Nonetheless, the proposal put forth in this thesis has fulfilled most of the key criteria for establishing accountability.

[5] Staffan I Lindberg, 'Accountability: The Core Concept and Its Subtypes' (Working Paper No. 1, Overseas Development Institute, April 2009) 8.

In addition, the literature has identified a number of purposes of accountability. For example, legal accountability has been identified as a 'corrective' measure which 'aims to ensure that individuals are treated in a just manner (in both the procedural and substantive sense of that term) within the parameters of the existing political and social framework.'[6] The process proposed in this thesis is a similarly 'corrective' measure and works to ensure that individuals are treated in a just manner by the UN on its peacekeeping operations within the existing framework of international human rights law.

Another purpose of accountability is its role in curtailing the abuse of executive power and privilege.[7] As discussed in Chapter Two, acts of SEA are an abuse of the power and privilege that UN peacekeeping personnel hold over the local population. Establishing an public accountability process, such as through the communications procedures of the UN treaty bodies, can contribute to addressing these abuses of power and privilege.

A final purpose of accountability is its role in 'stimulat[ing] public executives and bodies to focus consistently on achieving desirable societal outcomes.'[8] Accountability mechanisms can provide feedback to an institution on its past performance and recommendations to improve its future performance. In addition, a well-functioning and public accountability process can motivate institutions to strive for a better 'review' in the future. The proposal in this thesis would allow the UN treaty bodies to provide feedback to the UN on its current performance, offer recommendations for future actions, and provide the public scrutiny that may motivate the UN to focus on 'achieving desirable societal outcomes' by working even harder to eliminate SEA.

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[6] Colm O'Cinneide, 'Legal Accountability and Social Justice' in Nicholas Bamforth and Peter Leyland (eds), *Accountability in the Contemporary Constitution* (Oxford University Press: 2013) 389, 393.
[7] Bovens, above n 3, 466.
[8] Ibid.

7.3 Further Possibilities

The proposal in this thesis opens up a number of possibilities that have not yet been considered. These possibilities include extending the proposal in this thesis to include acts of SEA committed outside of UN peacekeeping operations and extending the proposal in this thesis to include other violations of international human rights law by the UN.

7.3.1 Sexual Exploitation and Abuse in Non-Peacekeeping Contexts

The proposal in this thesis may be applied to acts of SEA committed by UN personnel outside of peacekeeping operations as well. As discussed in Chapter One, reports of SEA have been received by the Organisation across a range of UN departments, agencies, funds, and programmes.[9] In fact, in recent times, almost one-third of the allegations of SEA have been outside of peacekeeping operations.[10] Hence, it is also possible to extend the proposal in this thesis to empower the UN treaty bodies to consider communications alleging SEA by UN personnel in other contexts as well.

7.3.2 Other Human Rights Violations

The focus of this thesis has been on establishing the accountability of the UN for acts of SEA on its peacekeeping operations. However, the UN has been accused of a range of human rights violations, such as the failure to prevent genocide, the failure to respect the right to life, and the failure to prevent torture and arbitrary detention.[11] In addition, the UN has been accused of human rights violations across a range of its operations outside of peacekeeping, such as in its relief and development operations and its administration of

[9] See, eg, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General,* UN GAOR, 65th sess, Agenda Item 134, UN Doc A/65/742 (18 February 2011) 2.
[10] See, eg, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 64th sess, Agenda Item 137 and 146, UN Doc A/64/669 (18 February 2010) 5; *Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General*, UN GAOR, 63rd sess, Agenda Item 123 and 132, UN Doc A/63/720 (17 February 2009) 5.
[11] For an overview, see Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge, 2011).

territory.[12] Hence, it may be argued that the UN should be held accountable for these violations of international human rights law as well.

The proposal in this thesis may be extended to argue that the UN should be held accountable for any human rights violation before any UN treaty body that has a communications procedure. For example, in Chapter Five, a matter was discussed in which the plaintiff alleged that the UN had unlawfully possessed his property during a humanitarian operation.[13] In matters such as this, it may be argued that, after the matter was declared outside of the domestic court's jurisdiction,[14] the plaintiff should have been able to submit his allegation to the Committee on Economic, Social and Cultural Rights as a violation of article 11 (adequate standard of living including housing) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Hence, the proposal put forth in this thesis may be the beginning of a more extensive regime to hold the UN to account for a range of human rights violations committed by, or attributable to, the UN.

Indeed, it may be argued that it would be untenable for accountability to arise only with regard to acts of SEA, even if only as a first step towards broadening UN accountability. After all, such a situation is unlikely to satisfy victims of other human rights violations. Nonetheless, it may be plausible and even justifiable for accountability to be focused on SEA rather than all possible human rights violations. Allegations of SEA by peacekeeping personnel have been made continuously for over a decade, which is indicative of the persistent and systemic nature of the problem. In contrast, other human rights allegations have been limited to specific conflicts or particular incidences and have not been as ongoing

[12] Ibid.
[13] 'Adbi Hosh Askir (Plaintiff) vs. United Nations, Hon. Boutros Boutros Ghali, Joseph E. Connor, Brown & Root Services Corp. and "Doe" Corporations (Defendants): Judgement No. 95 Civ. 11008 (JGK) of 29 July 1996, United States District Court for the Southern District of New York' [1996] *United Nations Juridical Yearbook* 502.
[14] Ibid 503-504.

or persistent in nature. Although the rate of official complaints of SEA is currently at its lowest, the Secretary-General's 2013 report shows that an official complaint is still received by the Organisation on average every four days. In fact, the former Assistant Secretary-General for peacekeeping operations, Jane Holl Lute, has stated that: '[m]y operating presumption [is] that this is either an ongoing or potential problem in every single one of our missions.' As discussed in Chapter Two, the UN itself has adopted a special focus on SEA. This can be seen, for example, in the establishment of the Group of Legal Experts (GLE) who have focused on the criminal accountability of UN officials for acts of SEA on peacekeeping operations, despite the range of human rights violations that UN officials might commit,[15] and the fact that this issue is now a standing agenda item for the General Assembly Sixth Committee (Legal).[16]

In sum, the proposal in this thesis may indeed be extended to include the range of allegations that have been made against the UN. It may be argued that the UN treaty body system should be opened up to all victims of human rights violations by the UN, as all victims have a right to an effective remedy.[17] However, the focus on UN accountability for SEA has also been warranted due to the ongoing, systemic, and prevalent nature of this type of violation. The ongoing and systemic nature of SEA makes it particularly important to

[15] Group of Legal Experts, *Ensuring the Accountability of United Nations Staff and Experts on Mission with respect to Criminal Acts committed in Peacekeeping Operations*, UN GAOR, 66th sess, Agenda Item 32, UN Doc A/60/980 (16 August 2006).

[16] For example, the General Assembly's Sixth Committee's 67th session in 2012 had as Agenda Item 76 the 'Criminal accountability of United Nations officials and experts on mission.' See *Sixty-seventh Session: General Information* (2013) General Assembly of the United Nations: Legal – Sixth Committee <http://www.un.org/en/ga/sixth/67/67_session.shtml>. Last Accessed: 12 August 2014.
For the agendas of previous sessions, see *Previous sessions* (2013) General Assembly of the United Nations: Legal – Sixth Committee <http://www.un.org/en/ga/sixth/previous_sessions.shtml>. Last Accessed: 12 August 2014.

[17] *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res 60/147, UN GAOR, 60th session, 64th plen mtg, Supp No 49, UN Doc A/RES/60/147 (21 March 2006, adopted 16 December 2005).

pursue the organisational accountability of the UN due to the Organisation's continuing failure to prevent these violations.

7.4 Other Approaches to the Problem of Sexual Exploitation and Abuse

The proposal put forth in this thesis is only one small part of a broader set of actions that is needed to resolve the problem of SEA. For example, as discussed in Chapter One, there are a range of legal actors who may be held responsible for SEA, including the individual perpetrator, the State from which the alleged perpetrator came, and the State in which the act occurred. The responsibilities of these other legal actors also need to be addressed. Discussions on these different areas of responsibility have already occurred in the literature. However, these discussions need to complement one another and need to clarify, rather than confuse, survivors of SEA in regard to the possible options for redress. A comparative analysis of the different forms of legal responsibility may be a valuable piece of future research.

In addition, legal responsibility is only one form of responsibility. There are many different forms of responsibility, such as administrative, operational, managerial, and financial, which may also be relevant to the issue of SEA. Discussions of these other areas of responsibility have also begun in the literature. For example, the importance of managerial and command responsibility was addressed in the *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects* (Zeid Report) in which it was recognised that managers and commanders have a responsibility to lead by example, to be responsive to allegations of SEA, and to implement specific programs and policies to eliminate SEA on

their missions.[18] Hence, these other areas of responsibility are also worthy of further consideration and action.

The literature has also recognised the importance of assistance to survivors of SEA that extends beyond legal justice. For example, the *SEA Victims Assistance Guide*, which was issued by a Task Force comprised of 30 UN and non-UN entities, has identified the different forms of assistance that survivors of SEA may require, such as: medical treatment; psychological counselling; material support including shelter, food, or clothing; support to pursue administrative or legal claims; and the facilitation of paternity or child support claims, if necessary.[19] These other forms of assistance may be of equal or even greater importance than legal redress. These other areas of assistance are also worthy of further research and action, and will undoubtedly complement and enhance the proposal put forth in this thesis.

Lastly, to eliminate the occurrence of SEA, both preventative and reactive measures are needed. Whilst legal justice is an important goal, the proposal in this thesis is mainly reactive in nature and concerns the redress for violations that have already occurred. Although the UN treaty bodies may issue recommendations for the prevention of further violations, a complaint cannot be made to a UN treaty body until a violation has been committed. Whilst it is important to redress past wrongs, it is perhaps of even greater importance to proactively prevent these wrongs from occurring. In this regard, the UN has already implemented a number of preventative measures, such as the creation of training

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[18] Prince Zeid Ra'ad Zeid Al-Hussein, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, UN GAOR, 57th sess, Agenda Item 77, UN Doc A/59/710 (24 March 2005) 23 ('*Zeid Report*').

[19] *SEA Victim Assistance Guide: Establishing Country-Based Mechanisms for Assisting Victims of Sexual Exploitation and Abuse by UN/NGO/IGO Staff and Related Personnel* (ECHA/ECPS UN and NGO Task Force on Protection from Sexual Exploitation and Abuse, April 2009) <www.un.org/en/pseataskforce/docs/victim_assistance_guide.doc>.

materials[20] and the development of codes of conduct.[21] Further preventative measures are undoubtedly needed to fully eliminate the occurrence of SEA.

The prevention of SEA, however, also needs to involve addressing the root causes of the problem. Some of these root causes have been identified throughout this thesis, such as the inequalities between men and women, the patriarchal view of men and women's sexuality, and the hyper-masculinised culture of war. For example, as discussed in Chapter Three, investigations by the UN have found that in communities affected by conflict, few job opportunities are available and many of these are taken by men, thereby increasing women and children's vulnerability to engaging in acts of SEA as a means of survival.[22] Hence, addressing the economic and political inequalities between men, women and children is a key component to reducing the vulnerability of women and children to being sexually exploited.

The hyper-masculinised culture of war and patriarchal beliefs about men and women's sexuality are also root causes of SEA. For example, patriarchal constructions of male and female sexuality, such as the role of the man as the pursuer and the woman as the pursued, the belief in men's biological 'need' for sexual release, and the perception of overcoming women's resistance as a part of the conquest, may form part of the broader cultural framework in which acts of SEA occur. In addition, the hyper-masculinised culture of military and war can further exaggerate the relationship of domination between men and women, fuel the aggressive aspects of masculinity, and distort the sense of what is needed

[20] *Tools Repository*, Protection from Sexual Exploitation and Abuse by UN and Related Personnel <http://www.un.org/en/pseataskforce/tools.shtml>. Last Accessed: 12 August 2014.
[21] See, eg, *Ten Rules: Code of Personal Conduct for Blue Helmets*, United Nations Peacekeeping <www.un.org/en/peacekeeping/documents/ten_in.pdf>; *We are United Nations Peacekeepers*, United Nations Peacekeeping <https://www.un.org/en/peacekeeping/documents/un_in.pdf>. Last Accessed: 12 August 2014.
[22] *Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, UN GAOR, 57th sess, Agenda Item 122, UN Doc A/57/465 (11 October 2002) 11.

to be a 'man'.[23] As demonstrated in Chapters One and Two, the long history of rape and prostitution during armed conflict is certainly a testimony to this. Hence, truly preventing the occurrence of SEA in the future will involve challenging the ideas of what it means to be a 'conquering' or successful soldier, and changing the perception of the role, value, and use of women, both on and off the battlefield. Hence, addressing the root causes of SEA should be at the centre of all attempts to resolve the problem of SEA, including in the actions taken by the UN, the debates had by academics, and the advocacy by activists.

7.5 Conclusion

The UN has strongly condemned the occurrence of SEA and has described these as 'abhorrent acts' which 'violat[e]… the fundamental duty of care that all United Nations peacekeeping personnel owe to the local population that they are sent to serve.'[24] Despite the UN's best intentions, the Organisation continues to receive complaints about the sexual misconduct of its peacekeeping personnel every year and continues to battle forward in attempt to eradicate the problem.

This thesis has examined one area of legal responsibility that has not yet been widely addressed: the organisational accountability of the UN. The aim of this thesis has been to propose a realistic and pragmatic solution to this aspect of the problem. It has been argued that expanding the role of the UN treaty bodies to receive communications from individuals alleging SEA by the UN may be one such solution.

The analysis in this thesis has attempted to 'think outside the box' and to consider approaches to legal accountability that may fall outside the traditional means of courtrooms

[23] See, eg, Sandra Whitworth, *Men, Militarism, and UN Peacekeeping: A Gendered Analysis* (Lynne Rienner Publishers, 2004).
[24] Zeid Report, above n 18, 1.

and tribunals. Whilst these traditional means of thinking and action are undoubtedly of value, the development of international law does not need to be restricted to or restrained by these traditions. As discussed, the International Court of Justice has recognised that '[t]hroughout its history, the development of international law has been influenced by the requirements of international life.'[25] Hence, rather than seeing international law as a series of legal constraints on what can and cannot be done, international law should be seen as a dynamic, progressive, and changing series of opportunities and possibilities. We are, after all, the 'international life' to which international law responds and, hence, we all have the opportunity to mould and change the progress of international law in the future. Empowering the UN treaty bodies with the competency to consider individual communications against the UN for acts of SEA may be one way in which international law can respond to the changing needs of international life and to strengthen the protection for some of the most vulnerable members of our international community.

[25] *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174, 8.

REFERENCES

Articles/Books/Reports

Books

Alen, André, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans and Mieke Verheyde, *Commentary on the United Nations Convention on the Rights of the Child. Article 34: Sexual Exploitation and Sexual Abuse of Children* (Koninklijke Brill, 2007)

Amerasinghe, CF, *Principles of the Institutional Law of International Organizat*ions (Cambridge University Press, 2005)

Barstow, Anne Llewellyn, *War's Dirty Secret: Rape, Prostitution, and Other Crimes Against Women* (Pilgrim Press, 2000)

Boonchalaksi, Wathinee and Philip Guest, *Prostitution in Thailand* (Institute for Population and Social Research Mahidol University, 1994)

Borowiak, Craig Thomas, *Accountability and Democracy: The Pitfalls and Promise of Popular Control* (Oxford University Press, 2011)

Bowett, Derek William, *The Law of International Institutions* (London Institute for World Affairs, Stevens and Sons, 1982)

Brouwer, Anne-Marie LM de, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR* (Intersentia, 2005)

Brownlie, Ian, 'The Responsibility of States for the Acts of International Organizations' in Maurizio Ragazzi (ed), *International Responsibility Today* (Loninklijke Brill, 2005) 355

Burke, Roisin, 'UN Military Peacekeeper Complicity in Sexual Abuse: The ICC or a Tri-hybrid Court' in Morten Bergsmo (ed), *Thematic Prosecution of International Sex Crimes* (Torkel Asphal, 2012) 317

Canivet, Guy, Mads Tønnesson Andenæs and Duncan Fairgrieve, *Independence, Accountability, and the Judiciary* (British Institute of International and Comparative Law, 2006)

Eriksson, Maria, *Defining Rape: Emerging Obligations for States Under International Law?* (Örebro University, 2010)

Farley, Melissa (ed), *Prostitution, Trafficking and Traumatic Stress* (Haworth Press Inc, 2003)

Farr, Kathryn, *Sex Trafficking: The Global Market in Women and Children* (Worth Publishers, 2005)

Frances, Raelene, 'The History of Female Prostitution in Australia' in Roberta Perkins, Garrett Prestage, Rachel Sharp and Frances Lovejoy (eds), *Sex Work and Sex Workers in Australia* (University of New South Wales Press, 1994) 27

Gallagher, Anne T, *The International Law of Human Trafficking* (Cambridge University Press, 2010)

Hafner, Gerhard, 'The Legal Personality of International Organizations: The Political Context of International Law' in August Reinisch and Ursula Kriebaum (eds), *The Law of International Relations – Liber Amicorum Hanspeter Neuhold* (Eleven International Publishers, 2007) 81

Hill, Catherine, 'Planning for Prostitution: An Analysis of Thailand's Sex Industry', in Meredeth Turshen and Briavel Holcomb (eds), *Women's Lives and Public Policy: The International Experience* (Praeger Publishers, 1993) 133

Joseph, Sarah and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 2014)

Kneebone, Susan and Julie Debeljak, *Transnational Crime and Human Rights: Reponses to Human Trafficking in the Greater Mekong Subregion* (Routledge, 2012)

Lees, Sue, *Ruling Passions: Sexual Violence, Reputation and the Law* (Open University Press, 1997)

Mendelson, Sarah E, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Center for Strategic and International Studies, 2005)

Millett, Kate, *Sexual Politics* (Abacus, 1972)

Mulgan, Richard, *Holding Power to Account: Accountability in Modern Democracies* (Pelgrave, 2003)

Nieto-Navia, Rafael, 'International Peremptory Norms ("jus cogens") and International Humanitarian Law' in Antonio Cassesse and Lal Chand Vohrah (eds), *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* (Martinus Nijhoff Publishers, 2003) 595

O'Cinneide, Colm, 'Legal Accountability and Social Justice' in Nicholas Bamforth and Peter Leyland (eds), *Accountability in the Contemporary Constitution* (Oxford University Press: 2013) 389

Oswald, Bruce, Helen Durham and Adrian Bates, *Documents on the Law of UN Peace Operations* (Oxford University Press, 2010)

Otto, Dianne, ' Making Sense of Zero Tolerance Policies in Peacekeeping Economies' in Vanessa Monro and Carl Stychin (eds), *Sexuality and the Law: Feminist Engagements* (Routledge-Cavendish, 2007) 259

Owen, Dave, Carol Adams and Rob Gray, *Accounting & Accountability: Changes and Challenges in Corporate Social and Environmental Reporting* (Prentice Hall, 1996)

Pateman, Carole, *The Sexual Contract* (Polity Press, 2003)

Quénivet, Noelle, 'The Role of the International Criminal Court in the Prosecution of Peacekeepers for Sexual Offenses' in Roberta Arnold (ed), *Law Enforcement within the Framework of Peace Support Operations* (Martinus Nijhoff, 2008) 399

Sands, Philippe and Pierre Klein, *Bowett's Law of International Institutions* (Thomas Reuters (Legal) Ltd, 2009)

Schermers, Henry G and Niels Blokker, *International Institutional Law: Unity Within Diversity* (Brill, 3rd ed, 1995)

Seyersted, Finn, *Common Law of International Organizations* (Martinus Nijhoff Publishers, 2008)

Simic, Olivera, *Regulation of Sexual Conduct in UN Peacekeeping Operations* (Springer, 2012)

Skjelsbæk, Inger, *The Elephant in the Room: An Overview of how Sexual Violence Came to be Seen as a Weapon of War* (International Peace Research Institute, 2010)

Solis, Gary D, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge University Press, 2010)

Tong, Rosemarie, *Women, Sex, and the Law* (Rowman & Allanheld, 1984)

Ulfstein, Geir, 'Individual Complaints' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012) 73

Verdirame, Guglielmo, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge, 2011)

Whitworth, Sandra, *Men, Militarism, and UN Peacekeeping: A Gendered Analysis* (Lynne Rienner Publishers, 2004)

Wickremasinghe, Chanaka and Guglielmo Verdirame, 'Responsibility and Liability for Violations of Human Rights in the Course of UN Field Operation's' in Craig Scott (ed), *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Hart Publishing, 2001) 465

Williams, Nancy M and Lesley Jolly, 'From Time Immemorial? Gender Relations in Aboriginal Societies before 'White Contact'' in Kay Saunders and Raymond Evans (eds), *Gender Relations in Australia: Domination and Negotiation* (Harcourt, Brace & Jovanovich, 1992) 9

Wills, Siobhan, *Protecting Civilians: The Obligations of Peacekeepers* (Oxford University Press, 2009)

Wouters, Jan and Pierre Schmitt, 'Challenging Acts of Other United Nations' Organs, Subsidiary Organs, and Officials' in August Reinisch (ed), *Challenging Acts of International Organizations Before National Courts* (Oxford University Press, 2010) 77

Yee, Sienho, '"Member Responsibility" and the ILC Articles on the Responsibility of International Organizations: Some Observations' in Maurizio Raggazi (ed), *Responsibility of*

International Organizations: Essays in Memory of Sir Ian Brownlie (Martinus Nijhoff, 2013) 325

Zwanenburg, Marten, *Accountability of Peace Support Operations* (Martin Nijhoff Publishers, 2005)

Journal Articles

Abramson, Kara, 'Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol' (2003) 44 *Harvard International Law Journal* 473

Ashkin, Kelly D, 'The International War Crimes Trial of Anto Furundžija: Major Progress Toward Ending the Cycle of Impunity for Rape Crimes' (1999) 12 *Leiden Journal of International Law* 935

Bassiouni, M Cherif, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59(4) *Law and Contemporary Problems* 63

Blokker, Niels M, 'Preparing Articles on Responsibility of International Organizations: Does the International Law Commission take International Organizations Seriously? A Mid-Term Review' (2011) *Research Handbook on the Law of International Organizations* 313

Bongiorno, Carla, 'A Culture of Impunity: Applying International Human Rights Law to the United Nations in East Timor' (2002) 33 *Columbia Human Rights Law Review* 623

Bovens, Mark, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) *European Law Journal* 447

Bower, Charles H, 'International Immunities: Some Dissident Views on the Role of Municipal Courts' (2000-2001) 41 *Virginia Journal of International Law* 1

Breitegger, Alexander, 'Sacrificing the Effectiveness of the *European Convention on Human Rights* on the Altar of the Effective Functioning of Peace Support Operations: A Critique of *Behrami* and *Saramati* and *Al Jeddaí*' (2009) 11 *International Community Law Review* 155

Buchanan, Allen and Robert O Keohane, 'Legitimacy of Global Governance Institutions' (2006) 20 *Ethics and International Affairs* 405

Burke, Roisin, 'Attribution of Responsibility: Sexual Abuse and Exploitation, and Effective Control of Blue Helmets' (2012) 16(1) *Journal of International Peacekeeping* 1

Buss, Doris, 'Prosecuting Mass Rape: Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic' (2002) 10 *Feminist Legal Studies* 91

Cassese, Antonio, 'The Nicaragua and Tadic Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia' (2007) 18 *European Journal of International Law* 649

Choi, Kwan, 'Human Trafficking for Sexual Exploitation in the UK: Case Study of Eastern Europe and the Baltic States' Women' (2010) 13(1) *International Area Review* 105

Chuang, Janie A, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy' (2009-2010) 158 *University of Pennsylvania Law Review* 1655

Dannenbaum, Tom, 'Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers' (2010) 51 *Harvard International Law Journal* 113

Doezema, Jo, 'Who Gets to Choose? Coercion, Consent and the UN Trafficking Protocol' (2002) 10(1) *Gender and Development* 20

Donat, Patricia L N and John D'Emilio, 'A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change' (1992) 48(1) *Journal of Social Issues* 9

Farmer, Alice, 'Non-Refoulement and Jus Cogens Limiting Anti-Terror Measures That Threaten Refugee Protection' (2008) 23(1) *Georgetown Immigration Law Journal* 1

Fetherston, AB, 'UN Peacekeepers and Cultures of Violence' (Spring 1995) 19(1) *Cultural Survival* <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/bosnia-and-herzegovina/un-peacekeepers-and-cultures-violenc#sthash.3EJ7h93G.dpuf>. Last Accessed: 12 August 2014.

Gilfoyle, Timothy J, 'Prostitutes in History: From Parables of Pornography to Metaphors of Modernity' (1999) 104(1) *The American Historical Review* 117

Henkin, Louis, 'Sibley Lecture, March 1994 Human Rights and State "Sovereignty"' (1995-1996) 25 *Georgia Journal of International and Comparative Law* 31

Hickey, James E Jr, 'The Source of International Legal Personality in the 21st Century' (1997) 2 *Hofstra Law and Policy Symposium* 1

Higate, Paul, 'Peacekeepers, Masculinities, and Sexual Exploitation' (2007) 10(1) *Men and Masculinities* 99

Hoq, Laboni Amena, 'The Women's Convention and its Optional Protocol: Empowering Women to Claim their Internationally Protected Rights' (2001) 32 *Columbia Human Rights Law Review* 677

Jennings, Kathleen M, 'Unintended Consequences of Intimacy: Political Economies of Peacekeeping and Sex Tourism' (2010) 17(2) *International Peacekeeping* 229

Jordan, Ann D, 'Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings' (2002) 10(1) *Gender and Development* 2

Kanetake, Machiko, 'Whose Zero Tolerance Counts? Reassessing a Zero Tolerance Policy against Sexual Exploitation and Abuse by UN Peacekeeping' (2010) 17(2) *International Peacekeeping* 200

Kent, Vanessa L, 'Peacekeepers as Perpetrators of Abuse: Examining the UN's plans to eliminate and address cases of sexual exploitation and abuse in peacekeeping operations' (2005) 14 (2) *African Security Review* 85

Kriegger, Heike, 'A Credibility Gap: the *Behrami* and *Saramati* Decision in the European Court of Human Rights' (2009) 13 *Journal of International Peacekeeping* 159

Kunz, Josef L, 'Privileges and Immunities of International Organizations' (1947) 41 *American Journal of International Law* 828

Kyllönen, Sanna, 'The Legal Framework For The Responsibility Of International Organizations' (2010) 1 *Nordic Journal of Commercial Law* 1

Larsen, Kjetil Mujezinovic, 'Attribution of Conduct in Peace Operations: The 'Ultimate Authority and Control' Test' (2008) 19(3) *The European Journal of International Law* 509

LeGrand, Camille E, 'Rape and Rape Laws: Sexism in Society and Law' (1973) 61 *California Law Review* 919

Lehr-Lehnardt, Rana, 'One Small Step for Women: Female-Friendly Provisions in the Rome Statute of the International Criminal Court' (2002) 16 *Brigham Young University Journal of Public Law* 317

Lehti, Martti and Kauko Aromaa, 'Trafficking for Sexual Exploitation' (2006) 34 *Crime and Justice* 133

Lillich, Richard B, 'The Growing Importance of Customary International Human Rights Law' (1995-1996) 25 *The Georgia Journal of International and Comparative Law* 287

Mégret, Frédéric and Florian Hoffmann, 'The UN as a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities' (2003) 25(2) *Human Rights Quarterly* 314

Milanovic Marko, and Tatjana Papic, 'As Bad as it Gets: The European Court of Human Rights' Behrami and Saramati Decision and General International Law' (2009) 58 *International and Comparative Law Quarterly* 267

Miller, Anthony J, 'Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations' (2006) 39 *Cornell International Law Journal* 71

Mukamana, Donatilla and Anthony Collins, 'Rape Survivors of the Rwandan Genocide' (2006) 17 *International Journal of Critical Psychology* 140

Munro, Vanessa E, 'Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution' (2006) 46 *British Journal of Criminology* 318

Murdoch, Jim, 'Unfulfilled Expectations: The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women' (2010) 1 *European Human Rights Law Review* 26

Murray, Jennifer, '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' (2003) 34 *Columbia Human Rights Law Review* 475

Nduka-Agwu, Adibeli, 'Doing Gender' After the War: Dealing with Gender Mainstreaming and Sexual Exploitation and Abuse in UN Peace Support Operations in Liberia and Sierra Leone' (2009) 11(2) *Civil Wars* 179

Ndulo, Muna, 'The United Nations Responses To The Sexual Abuse And Exploitation Of Women And Girls By Peacekeepers During Peacekeeping Missions' (2008) 27(1) *Berkley Journal of International Law* 126

O'Brien, Melanie, 'Prosecuting Peacekeepers in the ICC for Human Trafficking' (2006) 1 *Intercultural Human Rights Law Review* 281

O'Brien, Melanie, 'Sexual Exploitation and Beyond: Using the Rome Statute of the International Criminal Court to Prosecute UN Peacekeepers for Gender-based Crimes' (2011) 11(4) *International Criminal Law Review* 803

Odello, Marco, 'Tackling Criminal Acts in Peacekeeping Operations: The Accountability of Peacekeepers' (2010) 15(2) *Journal of Conflict & Security Law* 347

Patel, Preeti and Paolo Tripodi, 'Peacekeepers, HIV and the Role of Masculinity in Military Behaviour' (2007) 14(5) *International Peacekeeping* 584

Paust, Jordan J, 'The Significance and Determination of Customary International Human Rights Law: The Complex Nature, Sources and Evidences of Customary Human Rights' (1995-1996) 25 *Georgia Journal of International and Comparative Law* 147

Quénivet, Noëlle, 'Binding the United Nations to Human Rights Norms but Way of the Laws of Treaties' (2010) 42 *George Washington International Law Review* 587

Raymond, Janice G, 'The New UN Trafficking Protocol' (2002) 25(5) *Women's Studies International Forum* 491

Reinisch, August, 'Accountability of International Organisations according to National Law' (2005) 36 *Netherlands Yearbook of International Law* 119

Reinisch, August, 'Securing the Accountability of International Organizations' (2001) 7 *Global Governance* 31

Reinisch, August, 'The Immunity of International Organizations and the Jurisdiction of their Administrative Tribunals' (2008) 7(2) *Chinese Journal of International Law* 285

Rho-Ng, Elizabeth, 'Conscription of Asian Sex Slaves: Causes and Effects of U.S. Military Sex Colonialism in Thailand and the Call to Expand U.S. Asylum Law' (2003) 7 *Asian Law Journal* 103

Rothman, Jennifer, 'Getting What They Are Owed: Restitution Fees for Victims of Child Pornography' (2010-2011) 17 *Cardozo Journal of Law & Gender* 333

Sangalis, Theodore R, 'Elusive Empowerment: Compensating the Sex Trafficked Person under the Trafficking Victims Protection Act' (2011-2012) 80 *Fordham Law Review* 403)

Sari, Aurel, 'Jurisdiction and International Responsibility in Peace Support Operations: The Behrami and Saramati Cases' (2008) 8(1) *Human Rights Law Review* 151

Simic, Olivier, 'Rethinking 'sexual exploitation' in UN Peacekeeping Operations' (2009) 32(4) *Women's Studies International Forum* 288

Simm, Gabrielle, 'International Law as a Regulatory Framework for Sexual Crimes Committed by Peacekeepers' (2011) 16(3) *Journal of Conflict & Security Law* 473

Simma, Bruno and Philip Alston, 'Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1988) 82 *The Australian Yearbook of International Law* 12

Sullivan, Barbara, 'Trafficking in Women: Feminism and New International Law' (2003) 5(1) *International Feminist Journal of Politics* 67

Sweetser, Catherine, 'Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel' (2008) 83(5) *NYU Law Review* 1643

Valera, Roberto J, Robin G Sawyer and Glenn R Schiraldi, 'Violence and Post-Traumatic Stress Disorder in a Sample of Inner City Street Prostitutes' (2000) 16(3) *America Journal of Health Studies* 149

Wilde, Ralph, 'From Danzig to East Timor and Beyond: The Role of International Territorial Administration' (2001) 95 *American Journal of International Law* 583

Wood, Hugh McKinnon, 'Legal Relations between Individuals and a World Organization of States' (1944) 30 *Transactions of the Grotius Society* 141

Reports / Working Papers

Amnesty International, *Claiming Women's Rights: The Optional Protocol to the UN Women's Convention* (Amnesty International Publications, 2002)

Amnesty International, *So Does that Mean I Have Rights? Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo* (Amnesty International, 2004)

Barth, Elise 'The United Nations Mission in Eritrea/Ethiopia: Gender(ed) Effects' in Louise Olsson, Karen Hostens, Inger Skjelsbæk and Elise Fredrikke Barth (eds), *Gender Aspects of Conflict Interventions: Intended and Unintended Consequences* (Report to Norwegian Ministry of Foreign Affairs, 2004) 9

Cundiff, Kirby R, 'Prostitution and Sex Crimes' (Working Paper No 50, The Independent Institute, 8 April 2004)

d'Aspremont, Jean, 'The Articles on the Responsibility of International Organizations: Magnifying the Fissures in the Law of International Responsibility' (Legal Studies Research Paper No 2012-95, Amsterdam Law School, 2012)

Durch, William J, Katherine N Andrews, Madeline L England and Matthew C Weed, 'Improving Criminal Accountability in United Nations Peace Operations' (Stimson Centre Report No 65, The Henry L Stimson Center, June 2009)

Facio, Alda, 'The OP-CEDAW as a Mechanism for Implementing Women's Human Rights: An Analysis of the First Five Cases Under the Communications Procedure of the OP-CEDAW' (Occasional Papers Series No 12, International Women's Rights Action Watch Asia Pacific, 2008)

Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution* (Human Rights Watch, 2002)

Human Rights Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath* (Human Rights Watch, 1996)

Jennings, Kathleen, 'Protecting Whom?: Approaches to Sexual Exploitation and Abuse in UN Peacekeeping Operations' (Fafo Report, 2008)

Limanowska, Barbara, *Trafficking in Human Beings in Southeastern Europe: Current situation and responses to trafficking in human beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova and Romania'* (UNICEF/UNOHCHR/OSCE-ODIHR, June 2002)

Lindberg, Staffan I, 'Accountability: The Core Concept and Its Subtypes' (Working Paper No 1, Overseas Development Institute, April 2009)

Martin, Sarah, 'Must Boys be Boys?: Ending Sexual Exploitation & Abuse in UN Peacekeeping Missions' (Refugees International, 2005)

Porretto, Gabriele and Sylvain Vité, 'The Application of International Humanitarian Law and Human Rights Law to International Organisations' (Research Paper Series No 1, University Centre for International Humanitarian Law, 2006)

Ramaseshan, Geeta, 'The OP-CEDAW as a Mechanism for Implementing Women's Human Rights: An Analysis of Decisions Nos. 6 – 10 of the CEDAW Committee Under the Communications Procedure of the OP-CEDAW'(Occasional Papers Series No 13, International Women's Rights Action Watch Asia Pacific, 2009)

Sullivan, Donna J, 'Overview of the Rule Requiring the Exhaustion of Domestic Remedies under the Optional Protocol to CEDAW' (Technical Papers No 1, International Women's Rights Action Watch Asia Pacific, 2009)

Uerpmann, Robert, 'International Law as an Element of European Constitutional Law: International Supplementary Constitutions' (Jean Monnet Working Paper 9/03, Max Planck Institute for Comparative Public Law and International Law, 24-27 February 2003)

Vodjik, Valorie K, 'Sexual Violence Against Men and Women in War: A Masculinities Approach' (Research Paper No 217, University of Tennessee Legal Studies, July 2013)

Women's Initiatives for Gender Justice, 'Gender Report Card 2013 on the International Criminal Court' (Women's Initiatives for Gender Justice, March 2014)

Other

Roisin, Sarah Burke, *Sexual Exploitation and Abuse by UN Military Contingents: Moving Beyond the Current Status Quo and Responsibility Under International Law* (PhD Thesis, The University of Melbourne, 2012)

Simic, Olivera, *Distinguishing between Exploitative and Non-Exploitative Peacekeeping Sex: The Wrongs of 'Zero Tolerance* (PhD Thesis, The University of Melbourne, 2011)

Cases

International Courts

(i) International Court of Justice

Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo (Advisory Opinion) [2010] ICJ General List No 141

Certain Expenses of the United Nations (Article 17, Paragraph 2 of the Charter) (Advisory Opinion) [1962] ICJ Rep 151

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion) [1999] ICJ Rep 62

Effect of Awards of Compensation Made by the United Nations Administrative Tribunal (Advisory Opinion) [1953] ICJ Rep 47

Interpretation of the Agreement of March 1951 between the WHO and Egypt (Advisory Opinion) [1980] ICJ Rep 73

North Sea Continental Shelf (FRG v Neth) (Judgment) [1969] ICJ Rep [77]

Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174

(ii) International Criminal Tribunals

Prosecutor v Akayesu (Trial Chamber Judgment) (International Criminal Tribunal for Rwanda, Case No ICTR 96-4-T, 2 September 1998)

Prosecutor v Al Bashir (Warrant for Arrest) (International Criminal Court, Case No ICC-02/05-01/09, 4 March 2009)

Prosecutor v Ahmad Harun (Warrant of Arrest) (International Criminal Court, Case No ICC-02/05-01/07-2, 27 April 2007)

Prosecutor v Ali Kushayb (Warrant of Arrest) (International Criminal Court, Case No ICC-02/05-01/07-3, 27 April 2007)

Prosecutor v Blé Goudé (Warrant of Arrest) (International Criminal Court, Case No ICC-02/11-02/11, 21 December 2011)

Prosecutor v Furundžija (International Criminal Tribunal for the Former Yugoslavia, Case No IT-95-17/1-T, 16 July 1998)

Prosecutor v Gombo (Case in Progress) (International Criminal Court, Case No ICC-01/05-01/08)

Prosecutor v Katanga (Trial Chamber Judgment) (International Criminal Court, Trial Chamber II, Case No ICC-01/04-01/07, 7 March 2014)

Prosecutor v Katanga and Chui (Case in Progress) (International Criminal Court, Case No ICC-01/04-01/07)

Prosecutor v Kenyatta (Case in Progress) (International Criminal Court, Case No ICC-01/09-02/11, 23 January 2012)

Prosecutor v Kony (Warrant of Arrest) (International Criminal Court, Case No ICC-02/04-01/05-53, 27 September 2005)

Prosecutor v Kunarac, Kovać and Vuković (Trial Chamber Judgment) (International Criminal Tribunal for the Former Yugoslavia, Case No IT-96-23/1-T, 22 February 2001)

Prosecutor v Laurent Gbagbo (Case in Progress) (International Criminal Court, Case No ICC-02/11-01/11, 12 June 2014)

Prosecutor v Lubanga (Trial Chamber Judgment) (International Criminal Court, Trial Chamber I, Case No ICC-01/04-01/06, 14 March 2012)

Prosecutor v Mudacumura (Warrant of Arrest) (International Criminal Court, Case No ICC-01/04-01/12, 13 July 2012)

Prosecutor v Nikolić (Decision on defence motion challenging the exercise of jurisdiction by the Tribunal) (International Criminal Tribunal for the former Yugoslavia, Trial Chamber II, Case No IT-94-2-PT, 9 October 2002)

Prosecutor v Ngudjolo (Trial Chamber Judgment) (International Criminal Court, Trial Chamber II, Case No ICC-01/04-02/12, 18 December 2012)

Prosecutor v Ntaganda (Warrant of Arrest) (International Criminal Court, Case No ICC-01/04-02/06, 28 April 2008)

Prosecutor v Rwamakuba (Decision on Appropriate Remedy) (International Criminal Tribunal for Rwanda, Trial Chamber III, Case No ICTR-98-44C-T, 31 January 2007)

Prosecutor v Simone Gbagbo (Warrant of Arrest) (International Criminal Court, Case No ICC-02/11-01/12, 29 February 2012)

Regional Courts

Behrami v France and *Saramati v France, Germany and Norway* (European Court of Human Rights, Application Nos 71412/01 and 78166/01, 2 May 2007)

Berić and Others v Bosnia and Herzegovina (European Court of Human Rights, Application Nos 36357/04, 36360/04, 38346/04, 41705/04, 45190/04, 45578/04, 45579/04, 45580/04, 91/05, 97/05, 100/05, 101/05, 1211/05, 1123/05, 1125/05, 1129/05,

1132/05, 1133/05, 1169/05, 1172/05, 1175/05, 1177/05, 1180/05, 1185/05, 20793/05 and 25496/05, 16 October 2007)

Gajic v Germany (European Court of Human Rights, Application No 31446/02, 28 August 2007)

Kalinić and Milorad Bilbija v Bosnia and Herzegovina (European Court of Human Rights, Application Nos 45541/04 and 16587/07, 13 May 2008)

Sayag v Leduc (European Court of Justice, Case 5/68, 11 July 1968)

Waite and Kennedy v Germany (European Court of Human Rights, Application No 26083/94, 18 February 1999)

Domestic Courts

'Adbi Hosh Askir (Plaintiff) vs. United Nations, Hon. Boutros Boutros Ghali, Joseph E. Connor, Brown & Root Services Corp. and "Doe" Corporations (Defendants): Judgement No. 95 Civ. 11008 (JGK) of 29 July 1996, United States District Court for the Southern District of New York' [1996] *United Nations Juridical Yearbook* 502

African Development Bank v Mr X [French Court of Cassation] Appeal No 04-41012; ILDC 778 (FR 2005), 25 January 2005

'Anton Jakesch v. International Atomic Energy Agency: Decision of 8 July 1971 Labour Court of Vienna Austria' [1972] *United Nations Juridical Yearbook* 208

B et al v EPO [German Federal Constitutional Court] 2BvR 1458/03, 3 July 2006

Boimah v United Nations General Assembly, 664 F Supp 69 (EDNY, 1987)

'Decision of 8 November 1969 concerning an action brought in a Labour Court against the Economic Commission for Latin America Supreme Court, Chile' [1969] *United Nations Juridical Yearbook* 237

Entico Corporation Ltd v United Nations Educational Scientific and Cultural Association (UNESCO) [High Court of Justice] EWHC 531 (Comm), 18 March 2008

'Esterya Menon v. Alice E. Weil et al.: Judgement of 26 March 1971 Civil Court of the City of New York, New York County' [1971] *United Nations Juridical Yearbook* 249

'Firma Baumeister Ing. Richard L v. O… 14 December 2004, File No. 100b53/04y Austria Supreme Court' [2004] *United Nations Juridical Yearbook* 394

'Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the Staff Association of the International Civil Aviation Organization and Wayne Dixon, Respondents & Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the International Civil Aviation Organization and Dirk Jan Goossen, Respondents: Canada Court of Appeal' [2005] *United Nations Juridical Yearbook* 511

'Gérald René Trempe v. The ICAO Staff Association and Wayne Dixon; Gérald René Trempe v. Dirk Jan Goossen, the ICAO Council and Jesus Ocampo Province of Quebec, 20 November

2003, No. 500–05–061028–005 and No. 500–05–063492–019 High Court Canada' [2003] *United Nations Juridical Yearbook* 585

'Giovanni Porru v. Food and Agriculture Organization of the United Nations: Judgement of 25 June 1969 Rome Court of First Instance (Labour Section), Italy' [1969] *United Nations Juridical Yearbook* 239

HN v The Netherlands [District Court of the Hague] Case No 265615/HA ZA 06-1671, 10 September 2008.

'Judgment of the Court of Appeal of The Hague, LJN: BA 2778 (15 March 2007) The Netherlands' [2007] *United Nations Juridical Yearbook* 505

Manderlier v United Nations and Belgian State (Court of Appeals of Brussels, 69 ILR 139, 15 September 1969). Published in 'Manderlier v. United Nations and Belgian State: Decision of Brussels Appeals Court Belgium' [1969] *United Nations Juridical Yearbook* 236

'Mark Steven Corrinet, (Plaintiff) vs. United Nations, Hon. Boutros Boutros, Ghali, Gillian Sorensen and Ron Ginns (Defendants): Judgement No. C-95-0426 SAW. Memorandum and Order of 10 September 1996 United States District Court for the Northern District of California' [1996] *United Nations Juridical Yearbook* 530

'Ministry of Foreign Affairs Communiqué to the President of the Special Federal Conciliation and Arbitration Board No. 14 Mexico' [1989] *United Nations Juridical Yearbook* 395

Mothers of Srebrenica et al. v State of The Netherlands and the United Nations [Supreme Court of The Netherlands] Case No 10/04437, 13 April 2012

'Mrs. C. v. Intergovernmental Committee for European Migration (ICEM): Decision of 7 June 1973 Supreme Court of Cassation (Plenary for Civil Matters, Italy)' [1973] *United Nations Juridical Yearbook* 197

Netherlands v Nuhanović [Supreme Court of The Netherlands] Case No 12/03324, 6 September 2013

Pistelli v European University Institute [Corte di Cassazione (Sez. Unite Civili)] No 20995, 28 October 2005

SA Energies Nouvelles et Environnement v Agence Spatiale Européenne (European Space Agency) [Court of First Instance] 6216 JdT 171, ILDC 1229 (BE 2005), 1 December 2005

Siedler v Western European Union, Appeal Judgment [Brussels Court of Appeal] JT 2004, 617, ILDC 53 (BE 2003), 17 September 2003

'X v Department of Justice and Police: Judgement of 15 June 1977 Administrative Tribunal of the Republic and Canton of Geneva Switzerland' [1977] *United Nations Juridical Yearbook* 257

Legislation

International Organizations Immunities Act, 22 USC (1945)

International Organisations (Privileges and Immunities) Act (1963) (Cth)

International Organisations (Privileges and Immunities) Act 1968 (UK) c 48

Treaties

African Charter on Human and Peoples' Rights, open for signature 27 June 1981, OAU Doc AB/LEG/67/3 rev. 5, 21 ILM 58 (entered into force 21 October 1986)

American Convention on Human Rights, open for signature 22 November 1969, OAS Treaty Series No 36, 1144 UNTS 123 (entered into force 18 July 1978)

Articles on the Responsibilities of International Organizations, UN GAOR, 63rd sess, UN Doc A/CN.4/L.778 (30 May 2011)

C182 Worst Forms of Child Labour Convention, opened for signature 17 July 1999, C182 (entered into force 19 November 2000)

Charter of the United Nations

Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land, open for signature 18 October 1907, 187 CTS 227 (entered into force 26 January 1910)

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, open for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

Convention on the Rights of Persons with Disabilities, open for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008)

Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

Convention on the Privileges and Immunities of Specialized Agencies, open for signature 21 November 1947, 33 UNTS 261 (entered into force 2 December 1948)

Convention on the Privileges and Immunities of the United Nations, opened for signature 13 February 1946, 1 UNTS 15 and 90 UNTS 327 (entered into force 17 September 1946)

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, open for signature 4 October 1972, 1015 UNTS 163 (entered into force 26 March 1975)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, open for signature 13 January 1993, 1974 UNTS 45 (entered into force 29 April 1997)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, open for signature 18 September 1997, 2056 UNTS 241 (entered into force 1 March 1999)

Convention for the Protection of Cultural Property in the Event of Armed Conflict, open for signature 14 May 1954, 249 UNTS 240 (entered into force 7 August 1956)

Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, open for signature 21 March 1950, 96 UNTS 271 (entered into force 25 July 1951)

Draft Articles on the Responsibility of International Organizations, with Commentaries, UN GAOR, 63rd sess (30 May 2011)

European Convention for the Protection of Human Rights and Fundamental Freedoms, open for signature 4 November 1950, ETS 5 (entered into force 3 September 1953)

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, open for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950)

Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, open for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950)

Geneva Convention (III) Relative to the Treatment of Prisoners of War, open for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950)

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, open for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950)

Hague Convention II with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land, open for signature 29 July 1899, 187 CTS 429 (entered into force 4 September 1900)

International Agreement for the Suppression of the White Slave Trade, *as amended by the 1949 Protocol*, open for signature 18 May 1904, 92 UNTS 19 (entered into force 21 June 1951)

International Convention on the Elimination of All Forms of Racial Discrimination, open for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)

International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature 6 February 2007, UN Doc A/61/488 (entered into force 23 December 2010)

International Convention for the Suppression of the Traffic in Women and Children, open for signature 30 September 1921, 53 UNTS 39 (entered into force 24 April 1950)

International Convention for the Suppression of the Traffic of Women of Full Age, open for signature 11 October 1933, 150 UNTS 431 (entered into force 24 August 1934)

International Convention for the Suppression of the White Slave Traffic, open for signature 4 May 1910, 30 UNTS 23 (entered into force 21 June 1951)

International Covenant on Civil and Political Rights, open for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Economic, Social and Cultural Rights, open for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976)

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 10 December 1999, 2131 UNTS 83 (entered into force 22 December 1981)

Optional Protocol to the Convention on the Rights of Persons with Disabilities, open for signature 13 December 2006, UN Doc A/RES/61/106 Annex II (entered into force 3 May 2008)

Optional Protocol to Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2001)

Optional Protocol to the International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entry into force 23 March 1976)

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, open for signature 10 December 2008, UN Doc A/RES/63/117 (entered into force 5 May 2013)

Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, open for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978)

Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, open for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, open for signature 12 December 2000, UN Doc A/55/383 (entered into force 25 December 2003)

Rome Statute of the International Criminal Court, open for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002)

Statute of the International Court of Justice

Statute of the International Law Commission

United Nations Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981)

Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 3311 (entered into force 27 January 1980)

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, opened for signature 21 March 1986, UN Doc A/CONF.129/15

Websites/Online Materials

Advisory Jurisdiction, International Court of Justice <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=2>. Last Accessed: 12 August 2014.

BBC News, 'UN troops accused of sex crimes', 30 November 2006 (Michael Williams) <http://news.bbc.co.uk/player/nol/newsid_6190000/newsid_6197400/6197416.stm?bw=nb&mp=wm&news=1&bbcws=1>. Last Accessed: 12 August 2014.

Coalition Against the Trafficking in Women <http://www.catwinternational.org/>. Last Accessed: 12 August 2014.

Conflict background (18 April 2007) NATO <http://www.nato.int/kfor/docu/about/background.html> Last Accessed: 10 July 2012.

Crawford, Kerry F, 'From Spoils to Weapons: Framing Sexual Violence as a Weapon of War at the United Nations Security Council' (Speech delivered at the American Political Science Association 2013 Annual Meeting, Chicago, 29 August – 1 September 2013) <http://ssrn.com/abstract=2301879>. Last Accessed: 12 August 2014.

Davies, Patrick, *Like Landmines and Cluster Bombs, Rape Is a Weapon of War and Must Be Outlawed* (24 September 2013) Huffington Post <http://www.huffingtonpost.com/patrick-davies/like-landmines-and-cluste_b_3976575.html>. Last Accessed: 12 August 2014.

Dekker, Guido den, and Jessica Schechinger, *The Immunity of the United Nations before the Dutch Courts Revisited* (4 June 2010) The Hague Justice Portal, <http://www.haguejusticeportal.net/index.php?id=11748>. Last Accessed: 12 August 2014.

Ending the Demand (2011) Coalition Against the Trafficking in Women (CATW) International <http://www.catwinternational.org/ProjectsCampaigns/Ending>. Last Accessed: 12 August 2014.

Global Alliance Against Traffic in Women <http://www.gaatw.org/>. Last Accessed: 12 August 2014.

In DR Congo, M23 Rebels Kill, Rape Civilians (22 July 2013) Human Rights Watch <http://www.hrw.org/news/2013/07/22/dr-congo-m23-rebels-kill-rape-civilians-0>. Last Accessed: 12 August 2014.

International UNMO Club <http://web.archive.org/web/20091026220218/http://geocities.com/buzim_bu9/internationalunmoclub.html>. Last Accessed: 12 August 2014.

Jordan, Michael J, *Sex charges haunt UN forces* (26 November 2004) The Christian Science Monitor <http://www.csmonitor.com/2004/1126/p06s02-wogi.html>. Last Accessed: 12 August 2014.

Krasniqi, Ekrem, *UN Kosovo police arrested for sex trafficking* (1 September 2005) International Relations and Security Network <http://isn.ethz.ch/Digital-Library/Articles/Detail/?lng=en&id=107214>. Last Accessed: 12 August 2014.

Moon, Katherine HS, *Military Prostitution and the U.S. Military in Asia* (11 February 2009) Japan News <http://ikjeld.com/en/news/81>. Last Accessed: 12 August 2014.

Oxford Dictionaries <http://www.oxforddictionaries.com/>. Last Accessed: 12 August 2014.

Salazar, Mario, *Soldiers and Prostitution, What a Shock* (27 April 2012) Washington Times <http://communities.washingtontimes.com/neighborhood/21st-century-pacifist/2012/apr/27/soldiers-and-prostitution-what-shock/>. Last Accessed: 12 August 2014.

Stimson Centre <http://www.stimson.org>. Last Accessed: 12 August 2014.

Waterhouse, Rachel and Gil Lauriciano, *Mozambique Peace Process Bulletin* (June 1993) The Open University <http://www.open.ac.uk/technology/mozambique/pics/d75954.pdf>. Last Accessed: 15 September 2012.

What is International Humanitarian Law? (July 2004) International Committee of the Red Cross <http://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf>. Last Accessed: 12 August 2014.

Williams, Mike, *Fears over Haiti child abuse* (30 November 2006) BBC News <http://news.bbc.co.uk/2/hi/americas/6159923.stm>. Last Accessed: 12 August 2014.

United Nations Material

Reports

'Abuse of a Position of Vulnerability and Other "Means" within the Definition of Trafficking in Persons' (Issue paper, United Nations Office of Drug and Crime, April 2013)

Financial Report and Audited Financial Statements for the 12-month period from 1 July 2007 to 30 June 2008 and Report of the Board of Auditors, Volume II: United Nations Peacekeeping Operations, UN GAOR, 63rd sess, Supp No 5, UN Doc A/63/5 (Vol. II) (13 February 2009)

Financial Report and Audited Financial Statements for the 12-month period from 1 July 2008 to 30 June 2009 and Report of the Board of Auditors, Volume II: United Nations Peacekeeping Operations, UN GAOR, 64th sess, Supp No 5, UN Doc A/64/5 (Vol. II) (4 February 2010)

Financial Report and Audited Financial Statements for the 12-month period from 1 July 2009 to 30 June 2010 and Report of the Board of Auditors, Volume II: United Nations Peacekeeping Operations, UN GAOR, 65th sess, Supp No 5, UN Doc A/65/5 (Vol. II) (18 January 2011)

Financial Report and Audited Financial Statements for the Biennium ended 31 December 2011 and Report of the Board of Auditors, UN GAOR, 67th sess, Supp No 5, UN Doc A/67/5 (Vol. I) (26 July 2012)

Gaja, Giorgio, Special Rapporteur, *Second Report on the Responsibility of International Organizations*, UN Doc A/CN.4/541 (2 April 2004)

Gaja, Giorgio, Special Rapporteur, *Seventh Report on Responsibility of International Organizations*, UN Doc A/CN.4/610 (27 March 2009)

Gaja, Giorgio, Special Rapporteur, *Third Report on the Responsibility of International Organisations*, UN Doc A/CN.4/553 (13 May 2005)

Group of Legal Experts, *Ensuring the Accountability of United Nations Staff and Experts on Mission with respect to Criminal Acts committed in Peacekeeping Operations*, UN GAOR, 66th sess, Agenda Item 32, UN Doc A/60/980 (16 August 2006)

International Law Association, *Accountability of International Organisations* (Conference Report, Berlin, 2004)

Investigation by the Office of Internal Oversight Services into Allegations of Sexual Exploitation and Abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, UN GAOR, 59th sess, Agenda Items 114, 118 and 127, UN Doc A/59/661 (5 January 2005)

Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa, UN GAOR, 57th sess, Agenda Item 122, UN Doc A/57/465 (11 October 2002)

Lin Lean Lim, *Whither the Sex Sector? Some Policy Considerations, The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia* (International Labour Office, 1998)

Note for Implementing and Operational Partners on Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Findings and Recommendations from Assessment Mission 22 October - 30 November 2001 (United Nations High Commissioner for Refugees, February 2002)

Prince Zeid Ra'ad Zeid Al-Hussein, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, UN GAOR, 57th sess, Agenda Item 77, UN Doc A/59/710 (24 March 2005)

Report of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission: First session, UN GAOR, 66th sess, Supp No 54, UN Doc A/62/54 (9-13 April 2007)

'Reports of the Commission to the General Assembly' (15 November 1965 - 8 January 1966) [1966] II *Yearbook of the International Law Commission* 187

'Report of the International Law Commission on the work of its twenty-seventh session (5 May-25 July 1975)' [1975] II *Yearbook of the International Law Commission* 47

Report of the Office of Internal Oversight Services on its Investigation into Allegations of Sexual Exploitation and Abuse in the Ituri region (Bunia) in the United Nations Organization Mission in the Democratic Republic of the Congo, UN GAOR, 61st sess, Agenda Items 127, 132 and 136, UN Doc A/61/841 (5 April 2007)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 59th sess, Agenda Item 114 and 123, UN Doc A/59/782 (15 April 2005)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 60th sess, Agenda Item 129 and 136, UN Doc A/60/861 (24 May 2006)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 61st sess, Agenda Item 123 and 132, UN Doc A/61/957 (15 June 2007)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 62nd sess, Agenda Item 133 and 140, UN Doc A/62/890 (25 June 2008)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 63rd sess, Agenda Item 123 and 132, UN Doc A/63/720 (17 February 2009)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 64th sess, Agenda Item 137 and 146, UN Doc A/64/669 (18 February 2010)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 65th sess, Agenda Item 134, UN Doc A/65/742 (18 February 2011)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 66th sess, Agenda Item 139, UN Doc A/66/699 (17 February 2012)

Special Measures for Protection from Sexual Exploitation and Sexual Abuse: Report of the Secretary-General, UN GAOR, 67th sess, Agenda Item 135, UN Doc A/67/766 (28 February 2013)

Year in Review: United Nations Peacekeeping Operations 2011 (Peace and Security Section, United Nations Department of Public Information, 2011)

UN Juridical Yearbook

'Exchange of Letters Constituting an Agreement between the United Nations and Belgium relating to the Settlement of Claims filed against the United Nations in the Congo by Belgian Nationals' [1965] *United Nations Juridical Yearbook* 39

'Internal memorandum' [1964] *United Nations Juridical Yearbook* 263

'Interoffice memorandum to the Assistant Secretary-General for Human Resources, regarding waiving of immunity from legal process of officials of the Organization, other than Secretariat Officials and Experts on Mission' [2007] *United Nations Juridical Yearbook* 415

'Memorandum to the Controller' [2001] *United Nations Juridical Yearbook* 381
'Memorandum to the Deputy Chef de Cabinet' [1964] *United Nations Juridical Yearbook* 228

'Memorandum to the Director, Office for Field Operational and External Support Activities' [1986] *United Nations Juridical Yearbook* 300

'Note verbale to the Permanent Representative of a Member State to the United Nations regarding a civil suit instituted in the Conciliation and Arbitration Board' [2008] *United Nations Juridical Yearbook* 406

'Opinion of the Legal Advisor of the International Labour Office' [1977] *United Nations Juridical Yearbook* 247

General Assembly Resolutions

Criminal Accountability of United Nations Officials and Experts on Mission, GA Res 61/29, UN GAOR, 6th Comm, 61st sess, Agenda Item 33, UN Doc A/RES/61/29 (18 December 2006, adopted 4 December 2006)

Criminal Accountability of United Nations Officials and Experts on Mission, GA Res 62/63, UN GAOR, 6th Comm, 62nd sess, Agenda Item 80, UN Doc A/RES/62/63 (8 January 2008, adopted 6 December 2007)

Criminal Accountability of United Nations Officials and Experts on Mission, GA Res 63/119, UN GAOR, 6th Comm, 63rd sess, Agenda Item 73, UN Doc A/RES/63/119 (15 January 2009, adopted 11 December 2008)

Criminal Accountability of United Nations Officials and Experts on Mission, GA Res 64/110, UN GAOR, 6th Comm, 64th sess, Agenda Item 78, UN Doc A/RES/64/110 (15 January 2010, adopted 16 December 2009)

Criminal Accountability of United Nations Officials and Experts on Mission, GA Res 65/20, UN GAOR, 6th Comm, 65th sess, Agenda Item 76, UN Doc A/RES/65/20 (10 January 2011, adopted 6 December 2010)

Criminal Accountability of United Nations Officials and Experts on Mission, GA Res 66/93, UN GAOR, 6th Comm, 66th sess, Agenda Item 78, UN Doc A/RES/66/93 (13 January 2012, adopted 9 December 2011)

Criminal Accountability of United Nations Officials and Experts on Mission, GA Res 67/88, UN GAOR, 6th Comm, 67th sess, Agenda Item 76, UN Doc A/RES/67/88 (14 January 2013, adopted 14 December 2012)

Declaration on the Elimination of Violence Against Women, GA Res 48/104, UN GAOR, 85th plen mtg, UN Doc A/RES/48/104 (20 December 1993)

Limitation of Damages in Respect of Acts Occurring within the Headquarters District, GA Res 48/104, UN GAOR, 101st plen mtg, UN Doc A/RES/41/210 (11 December 1986)

Responsibility of International Organizations, GA Res 66/100, UN GAOR, 6th Comm, 66th sess, Agenda Item 81, UN Doc A/RES/66/100 (9 December 2011)

Support Account for Peacekeeping Operations, GA Res 59/300, UN GAOR, 59th sess, Agenda Item 123, UN Doc A/RES/59/301 (31 August 2005, adopted 22 June 2005)

Third-Party Liability: Temporal and Financial Limitations, GA Res 52/247, UN GAOR, 52nd sess, Agenda Item 142(a), UN Doc A/RES/52/247 (17 July 1998)

Security Council Resolutions

SC Res 808, UN SCOR, 3175th mtg, UN Doc S/RES/808 (25 May 1993)

SC Res 955, UN SCOR, 3453rd mtg, UN Doc S/RES/955 (8 November 1994)

SC Res 1244, UN SCOR, 4011th mtg, UN Doc S/RES/1244 (10 June 1999)

SC Res 1291, UN SCOR, 4104th mtg, UN Doc S/RES/1291 (24 February 2000)

SC Res 1509, UN SCOR, 4830th mtg, UN Doc S/RES/1509 (19 September 2003)

SC Res 1528, UN SCOR, 4918th mtg, UN Doc S/RES/1528 (27 February 2004)

SC Res 1542, UN SCOR, 4961st mtg, UN Doc S/RES/1542 (30 April 2004)

SC Res 1590, UN SCOR, 5151st mtg, UN Doc S/RES/1590 (24 March 2005)

SC Res 1769, UN SCOR, 5727th mtg, UN Doc S/RES/1769 (31 July 2007)

SC Res 1778, UN SCOR, 5748th mtg, UN Doc S/RES/1778 (25 September 2007)

SC Res 1820, UN SCOR, 5916th mtg, UN Doc S/RES/1820 (19 June 2008)

SC Res 1888, UN SCOR, 6195th mtg, UN Doc S/RES/1888 (30 September 2009)

SC Res 1894, UN SCOR, 6216th mtg, UN Doc S/RES/1894 (11 November 2009)

SC Res 1925, UN SCOR, 6324th mtg, UN Doc S/RES/1925 (28 May 2010)

SC Res 1960, UN SCOR, 6453rd mtg, UN Doc S/RES/1960 (16 December 2010)

SC Res 1996, UN SCOR, 6576th mtg, UN Doc S/RES/1996 (8 July 2011)

SC Res 2106, UN SCOR, 6984th mtg, UN Doc S/RES/2106 (24 June 2013)

CEDAW Committee

Committee on the Elimination of Discrimination against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: China*, 36th sess, UN Doc CEDAW/C/CHN/CO/6 (25 August 2006)

Committee on the Elimination of Discrimination against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Uzbekistan*, 36th sess, UN Doc CEDAW/C/UZB/CO/3 (25 August 2006)

Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Azerbaijan*, 44th sess, UN Doc CEDAW/C/AZE/CO/4 (7 August 2009)

Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Libyan Arab Jamahiriya*, 43rd sess, UN Doc CEDAW/C/LBY/CO/5 (6 February 2009)

Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Paraguay*, 50th sess, UN Doc CEDAW/C/PRY/CO/6 (8 November 2011)

Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Russian Federation*, 46th sess, UN Doc CEDAW/C/USR/CO/7 (16 August 2010)

Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Zambia,* 49th sess, UN Doc CEDAW/c/ZMB/CO/5-6 (19 September 2011)

Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Hungary*, 54th sess, UN Doc CEDAW/C/HUN/CO/7-8 (26 March 2013)

Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Sixth Periodic Report of Equatorial Guinea*, 53rd sess, UN Doc CEDAW/C/GNQ/CO/6 (9 November 2012)

Committee on the Elimination of Discrimination against Women, *General Recommendation No 19: Violence Against Women*, 11th sess, UN Doc HRI/GEN/1/Rev.9 (Vol.II) (1992)

Committee on the Elimination of Discrimination against Women, *General Recommendation No 24: Women and Health*, 20th sess, UN Doc A/54/38/Rev.1 (Chap 1) (1999)

Committee on the Elimination of Discrimination against Women, *Views: Communication No 2/2003*, 32nd sess, UN Doc CEDAW/C/36/D/2/2003 (26 January 2005) (‘*AT v Hungary’*)

Committee on the Elimination of Discrimination against Women, *Views: Communication No 4/2004*, 36th sess, UN Doc CEDAW/C/36/D/4/2004 (14 August 2006) (‘*AS v Hungary’*)

Committee on the Elimination of Discrimination against Women, *Views: Communication No 5/2005*, 39th sess, UN Doc CEDAW/C/39/D/5/2005 (6 August 2007) (‘*Goekce v Austria’*)

Committee on the Elimination of Discrimination against Women, *Views: Communication No 6/2005*, 39th sess, UN Doc CEDAW/C/39/D/6/2005 (6 August 2007) (‘*Yildirim v Hungary’*)

Committee on the Elimination of Discrimination against Women, *Views: Communication No 18/2008*, 46th sess, UN Doc CEDAW/C/46/D/18/2008 (16 July 2010) ('*Vertido v The Philippines*')

Committee on the Elimination of Discrimination against Women, *Views: Communication No 20/2008*, 49th sess, UN Doc CEDAW/C/49/D/20/2008 (27 September 2011) ('*VK v Bulgaria*')

Committee on the Elimination of Discrimination against Women, *Views: Communication No 22/2009*, 50th sess, UN Doc CEDAW/C/50/D/22/2009 (25 November 2011) ('*LC v Peru*')

Committee on the Elimination of Discrimination against Women, *Views: Communication No 32/2011*, 52nd sess, UN Doc CEDAW/C/52/D/32/2011 (28 August 2012) ('*Jallow v Bulgaria*')

Report of the Committee on the Elimination of Discrimination against Women: Fifty-second session (9-27 July 2012), Fifty-third session (1-19 October 2012), Fifty-fourth session (11 February-1 March 2013), UN GAOR, 68th session, Supp No 38, UN Doc A/68/38 (2013)

Report of the Committee on the Elimination of Discrimination against Women: Twenty-eighth session (13-31 January 2003) Twenty-ninth session (30 June-18 July 2003), UN GAOR, 58th sess, Supp No 38, UN Doc (A/58/38) (2003)

Report of the Committee on the Elimination of Discrimination against Women: Twenty-fourth session (15 Janury-2 February 2001), Twenty-fifth session (2-20 July 2001), UN GAOR, 56th sess, Supp No 38, UN Doc A/56/38 (2001)

Human Rights Committee

Human Rights Committee, *Concluding Observations of the Human Rights Committee: Belgium*, 64th sess, UN Doc CCPR/C/79/Add.99 (19 November 1998)

Human Rights Committee, *Concluding Observations of the Human Rights Committee: Japan*, 64th sess, UN Doc CCPR/C/79/Add.102 (19 November 1998)

Human Rights Committee, *Concluding Observations of the Human Rights Committee: Mexico*, 66th sess, UN Doc CCPR/C/79/Add.109 (27 July 1999)

Human Rights Committee, *Concluding Observations of the Human Rights Committee: Sri Lanka*, 54th sess, UN Doc CCPR/C/79/Add.99 (27 July 1995)

Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Comments by the United Nations Interim Administration Mission in Kosovo (UNMIK) on the Concluding Observations of the Human Rights Committee*, UN Doc CCPR/C/UNK/CO/1/Add.1 (1 April 2008)

Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Kosovo*, 87th sess, UN Doc CCPR/C/UNK/CO/1 (14 August 2006)

Human Rights Committee, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee Serbia and Montenegro*, 81st sess, UN Doc CCPR/CO/81/SEMO (12 August 2004)

Human Rights Committee, *General Comment No 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 32nd sess, UN Doc HRI/GEN/1/Rev.1 (8 April 1988)

Human Rights Committee, *General Comment 17: Article 24 (Rights of the Child)*, 35th sess, UN Doc HRI/GEN/1/Rev.1 (7 April 1989)
Human Rights Committee, *General Comment 20: Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment (Article 7),* 44th sess, UN Doc HRI/GEN/1/Rev.1 (1992)

Human Rights Committee, *General Comment No 26: Continuity of Obligations*, 61st sess, 1631st mtg, UN Doc CCPR/C/21/Rev.1/Add.8/Rev.1 (8 December 1997)

Human Rights Committee, *General Comment 28: Equality of Rights between Men and Women (Article 3)*, 68th sess, UN Doc CCPR/C/21/Rev.1/Add.10 (29 March 2000)

Human Rights Committee, *Report Submitted by the United Nations Interim Administration Mission in Kosovo to the Human Rights Committee on the Human Rights Situation in Kosovo Since 1999*, UN Doc CCPR/C/UNK/1 (13 March 2006)

Human Rights Committee, *Views: Communication No 1610/2007*, 102nd sess, UN Doc CCPR/C/102/D/1610/2007 (16 August 2011) ('*LNP v Argentina*')

Other UN Treaty Bodies

Committee against Torture, *Communication No 262/2005*, 37th sess, UN Doc CAT/C/37/D/262/2005 (22 January 2007) ('*VL v Switzerland*')

Committee against Torture, *Communication No 322/2007*, 44th sess, UN Doc CAT/C/44/D/322/2007 (3 June 2010) ('*Njamba and Balikosa v Sweden*')

Committee against Torture, *Communication No 444/2010*, 48th sess, UN Doc CAT/C/48/D/444/2010 (1 June 2012) ('*Abdussamatov and ors v Kazakhstan*')

Committee against Torture, *Rules of Procedure*, UN Doc CAT/C/3/Rev.6 (13 August 2013)

Committee on the Rights of the Child, *Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, UN Doc CRC/C/62/3 (16 April 2013)

Websites

Conduct and Discipline, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/issues/cdu.shtml>. Last Accessed: 12 August 2014.

Facts and Figures: Ending Violence against Women, A Pandemic in Diverse Forms (2014) UN Women <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>. Last Accessed: 12 August 2014.

General Recommendations (2009) UN Women

<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>. Last Accessed: 12 August 2014.

Getting Involved, UNPOL <http://www.un.org/en/peacekeeping/sites/police/recruitment.shtml>. Last Accessed: 12 August 2014.

History of Peacekeeping, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/operations/history.shtml>. Last Accessed: 12 August 2014.

History of United Nations Police, UNPOL <http://www.un.org/en/peacekeeping/sites/police/history.shtml>. Last Accessed: 12 August 2014.

How the Court works, International Court of Justice <http://www.icj-cij.org/court/index.php?p1=1&p2=6>. Last Accessed: 12 August 2014.

Human Rights Bodies - Complaints Procedures (2012) United Nations Office of the High Commissioner on Human Rights <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>. Last Accessed: 12 August 2014.

Military, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/issues/military.shtml>. Last Accessed: 12 August 2014.

MONUSCO Facts and Figures (28 February 2014) United Nations <http://www.un.org/en/peacekeeping/missions/monusco/facts.shtml>. Last Accessed: 12 August 2014.

Outreach: Communications Campaigns (2010) United Nations Conduct and Discipline Unit <http://cdu.unlb.org/Outreach/CommunicationsCampaigns.aspx>. Last Accessed: 12 August 2014.

Peace and Security, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/operations/peace.shtml>. Last Accessed: 12 August 2014.

Peacekeeping Fact Sheet (28 February 2014) United Nations Peacekeeping <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml>. Last Accessed: 12 August 2014.

Previous sessions (2013) General Assembly of the United Nations: Legal – Sixth Committee <http://www.un.org/en/ga/sixth/previous_sessions.shtml>. Last Accessed: 12 August 2014.

Protection from Sexual Exploitation and Abuse (PSEA) Task Force, *To Serve with Pride: Zero Tolerance for Sexual Exploitation and Abuse* (2006) <http://www.pseataskforce.org/>. Last Accessed: 12 August 2014.

Reinisch, August, *Convention on the Privileges and Immunities of the United Nations, Convention on the Privileged and Immunities of the Specialized Agencies*, United Nations Audiovisual Library of International Law <http://legal.un.org/avl/ha/cpiun-cpisa/cpiun-cpisa.html>. Last Accessed: 12 August 2014.

Sixty-seventh Session: General Information (2013) General Assembly of the United Nations: Legal – Sixth Committee <http://www.un.org/en/ga/sixth/67/67_session.shtml>. Last Accessed: 12 August 2014.

Subsidiary Organs, United Nations Security Council <http://www.un.org/en/sc/subsidiary>. Last Accessed: 12 August 2014.

Task Force (2013) Protection from Sexual Exploitation and Abuse by our own staff <http://www.pseataskforce.org/en/taskforce>. Last Accessed: 12 August 2014.

Tools Repository, Protection from Sexual Exploitation and Abuse by UN and Related Personnel <http://www.un.org/en/pseataskforce/tools.shtml>. Last Accessed: 12 August 2014.

United Nations Military Observers (2009) United Nations Mission in Ethiopia and Eritrea (UNMEE) <http://unmee.unmissions.org/Default.aspx?tabid=88>. Last Accessed: 12 August 2014.

United Nations Office of the High Commissioner for Human Rights, 'Children can now lodge complaints with the UN about violations of their rights' (Media Release, 14 April 2014) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14503&LangID=E>. Last Accessed: 12 August 2014.

Welcome to the Conduct and Discipline Unit (2010) United Conduct and Discipline Unit <http://cdu.unlb.org/>. Last Accessed: 12 August 2014.

What is Peacekeeping?, United Nations Peacekeeping <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>. Last Accessed: 12 August 2014.

What the UN Police do in the Field, UNPOL <http://www.un.org/en/peacekeeping/sites/police/work.shtml>. Last Accessed: 12 August 2014.

What We Do (2012) United Nations Office of the High Commissioner for Human Rights <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>. Last Accessed: 12 August 2014.

Other Documents

A Declaration of Commitment to End Sexual Violence in Conflict <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244849/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT__TO_PRINT....pdf> . Last Accessed: 12 August 2014.

Agreement between the Government of Sudan and the United Nations Mission in Sudan (2005) <http://unmis.unmissions.org/Portals/UNMIS/Documents/General/sofa.pdf>. Last

Accessed: 12 August 2014.
Agreement between the United Nations and the African Union and Government of Sudan concerning the status of the African Union/United Nations Hybrid Operation in Darfur (February 2008)
<http://unamid.unmissions.org/Portals/UNAMID/UNAMID%20SOFA.pdf>. Last Accessed: 12 August 2014.

Agreement between the United Nations and the Government of Haiti concerning the status of the United Nations Operation in Haiti (2004) <http://ijdh.org/wordpress/wp-content/uploads/2011/11/4-Status-of-Forces-Agreement-1.pdf>. Last Accessed: 12 August 2014.

Annan, Kofi A, *Letter dated 9 February 2005 from the Secretary-General addressed to the President of the Security Council*, UN SCOR, UN Doc S/2005/79 (9 February 2005)

Annan, Kofi A, *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, UN Doc ST/SGB/1999/13 (6 August 1999)

Annan, Kofi A, *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003)

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res 60/147, UN GAOR, 60th session, 64th plen mtg, Supp No 49, UN Doc A/RES/60/147 (21 March 2006, adopted 16 December 2005)

Beijing Declaration and Platform for Action, UN Doc A/CONF.177/20/Rev.1 15 (adopted December 1995)

Code of Conduct on Sexual Exploitation and Abuse, United Nations Mission in the Democratic Republic of Congo (MONUC)
<http://www.pseataskforce.org/uploads/tools/codeofconductonsea_unmissionindrc_english.pdf>. Last Accessed: 12 August 2014.

Criminal Accountability of United Nations Officials and Experts on Mission: Note by the Secretariat, UN GAOR, 62nd sess, Agenda Item 82, UN Doc A/62/329 (11 September 2007)

Financing of the United Nations Protection Force, the United Nations Confidence Restoration Operation in Croatia, the United Nations Preventive Deployment Force and the United Nations Peace Forces headquarters, UN GAOR, 51st sess, UN Doc A/51/389 (20 September 1996)

Financial Regulations and Rules of the United Nations, UN Doc ST/SGB/2003/7 (9 May 2003)

International Criminal Court, *Elements of Crimes*, UN Doc No ICC-ASP/1/3 (part II-B) (adopted 9 September 2002)

International Law Commission, *Responsibility of international organizations: Comments and observations received from international organizations*, 63rd sess, UN Doc A/CN.4/637/Add.1 (17 February 2011)

Model Status-of-Forces Agreement for Peacekeeping Operations, UN GAOR, 45th sess, Agenda Item 76, UN Doc A/45/594 (9 October 1990)
Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* UN Doc E/2002/68/Add.1 (20 May 2002)

Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children, UN GAOR, 51st sess, Agenda Item 108, UN Doc A/51/306 (26 August 1996)

Revised Draft Model Memorandum of Understanding between the United Nations and [participating State] Contributing Resources to [the United Nations Peacekeeping Operation], UN GAOR, 61st sess, Agenda Item 33, UN Doc A/61/494 (3 October 2006) Annex H

SEA Victim Assistance Guide: Establishing Country-Based Mechanisms for Assisting Victims of Sexual Exploitation and Abuse by UN/NGO/IGO Staff and Related Personnel (United Nations Office for the Coordination of Humanitarian Affairs, April 2009) <www.un.org/en/pseataskforce/docs/victim_assistance_guide.doc>. Last Accessed: 12 August 2014.

S*taff Rules and Staff Regulations of the United Nations*, UN Doc ST/SGB/2013/3 (1 January 2013)

Stockholm Declaration and Agenda for Action (31 August 1996) First World Congress Against Commercial Sexual Exploitation of Children <http://www.unicef.org/lac/spbarbados/Planning/Global/Child%20protection/The%20Stockholm%20Declaration%20and%20Agenda%20for%20Action_1996.doc>. Last Accessed: 12 August 2014.

Ten Rules: Code of Personal Conduct for Blue Helmets, United Nations Peacekeeping <www.un.org/en/peacekeeping/documents/ten_in.pdf>. Last Accessed: 12 August 2014.

United Nations Office on Drug and Crime, *Model Law Against Trafficking In Persons*, UN Doc V.09-81990(E) (5 August 2009)

United Nations Office of Drug and Crime, *Travaux Preparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006)

UNMIK Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, UN Doc UNMIK/REG/2000/47 (18 August 2000)
We are United Nations Peacekeepers, United Nations Peacekeeping <https://www.un.org/en/peacekeeping/documents/un_in.pdf>. Last Accessed: 12 August 2014.

APPENDICES

Appendix A

Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse

United Nations ST/SGB/1999/13

Secretariat

6 August 1999

Secretary-General's Bulletin

Observance by United Nations forces of international humanitarian law

The Secretary-General, for the purpose of setting out fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control, promulgates the following:

Section 1
Field of application

1.1 The 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. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.

1.2 The promulgation of this bulletin does not affect the protected status of members of peacekeeping operations under the 1994 Convention on the Safety of United Nations and Associated Personnel or their status as non-combatants, as long as they are entitled to the protection given to civilians under the international law of armed conflict.

Section 2
Application of national law

The present provisions do not constitute an exhaustive list of principles and rules of international humanitarian law binding upon military personnel, and do not prejudice the application thereof, nor do they replace the national laws by which military personnel remain bound throughout the operation.

Section 3
Status-of-forces agreement

In the status-of-forces agreement concluded between the United Nations and a State in whose territory a United Nations force is deployed, the United Nations undertakes to ensure that the force shall conduct its operations with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel. The United Nations also undertakes to ensure that members of the military personnel of the force are fully acquainted with the principles and rules of those international instruments. The obligation to respect the said principles and rules is applicable to United Nations forces even in the absence of a status-of-forces agreement.

Section 4
Violations of international humanitarian law

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.

Section 5
Protection of the civilian population

5.1 The United Nations force shall make a clear distinction at all times between civilians and combatants and between civilian objects and military objectives. Military operations shall be directed only against combatants and military objectives. Attacks on civilians or civilian objects are prohibited.

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5.2 Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

5.3 The United Nations force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

5.4 In its area of operation, the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. Military installations and equipment of peacekeeping operations, as such, shall not be considered military objectives.

5.5 The United Nations force is prohibited from launching operations of a nature likely to strike military objectives and civilians in an indiscriminate manner, as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.

5.6 The United Nations force shall not engage in reprisals against civilians or civilian objects.

Section 6
Means and methods of combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body; and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.

6.5 It is forbidden to order that there shall be no survivors.

6.6 The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. In its area of operation, the United Nations force shall not use such cultural property or their immediate surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.

6.7 The United Nations force is prohibited from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as foodstuff, crops, livestock and drinking-water installations and supplies.

6.8 The United Nations force shall not make installations containing dangerous forces, namely dams, dikes and nuclear electrical generating stations, the object of military operations if such operations may cause the release of dangerous forces and consequent severe losses among the civilian population.

6.9 The United Nations force shall not engage in reprisals against objects and installations protected under this section.

Section 7
Treatment of civilians and persons *hors de combat*

7.1 Persons not, or no longer, taking part in military operations, including civilians, members of armed forces who have laid down their weapons and persons placed *hors de combat* by reason of sickness, wounds or detention, shall, in all circumstances, be treated humanely and without any adverse distinction based on race, sex, religious convictions or any other ground. They shall be accorded full respect for their person, honour and religious and other convictions.

7.2 The following acts against any of the persons mentioned in section 7.1 are prohibited at any time and in any place: violence to life or physical integrity; murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishment; reprisals; the taking of hostages; rape; enforced prostitution; any form of sexual assault and humiliation and degrading treatment; enslavement; and pillage.

7.3 Women shall be especially protected against any attack, in particular against rape, enforced prostitution or any other form of indecent assault.

7.4 Children shall be the object of special respect and shall be protected against any form of indecent assault.

Section 8
Treatment of detained persons

The United Nations force shall treat with humanity and respect for their dignity detained members of the armed forces and other persons who no longer take part in military operations by reason of detention. Without prejudice to their legal status, they shall be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949, as may be applicable to them *mutatis mutandis*. In particular:

(a) Their capture and detention shall be notified without delay to the party on which they depend and to the Central Tracing Agency of the International Committee of the Red Cross (ICRC), in particular in order to inform their families;

(b) They shall be held in secure and safe premises which provide all possible safeguards of hygiene and health, and shall not be detained in areas exposed to the dangers of the combat zone;

(c) They shall be entitled to receive food and clothing, hygiene and medical attention;

(d) They shall under no circumstances be subjected to any form of torture or ill-treatment;

(e) Women whose liberty has been restricted shall be held in quarters separated from men's quarters, and shall be under the immediate supervision of women;

(f) In cases where children who have not attained the age of sixteen years take a direct part in hostilities and are arrested, detained or interned by the United Nations force, they shall continue to benefit from special protection. In particular, they shall be held in quarters separate from the quarters of adults, except when accommodated with their families;

(g) ICRC's right to visit prisoners and detained persons shall be respected and guaranteed.

Section 9
Protection of the wounded, the sick, and medical and relief personnel

9.1 Members of the armed forces and other persons in the power of the United Nations force who are wounded or sick shall be respected and protected in all circumstances. They shall be treated humanely and receive the medical care and attention required by their condition, without adverse distinction. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

9.2 Whenever circumstances permit, a suspension of fire shall be arranged, or other local arrangements made, to permit the search for and identification of the wounded, the sick and the dead left on the battlefield and allow for their collection, removal, exchange and transport.

9.3 The United Nations force shall not attack medical establishments or mobile medical units. These shall at all times be respected and protected, unless they are used, outside their humanitarian functions, to attack or otherwise commit harmful acts against the United Nations force.

9.4 The United Nations force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick, as well as religious personnel.

9.5 The United Nations force shall respect and protect transports of wounded and sick or medical equipment in the same way as mobile medical units.

9.6 The United Nations force shall not engage in reprisals against the wounded, the sick or the personnel, establishments and equipment protected under this section.

9.7 The United Nations force shall in all circumstances respect the Red Cross and Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited.

9.8 The United Nations force shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives. To this end, the force shall facilitate the work of the ICRC Central Tracing Agency.

9.9 The United Nations force shall facilitate the work of relief operations which are humanitarian and impartial in character and conducted without any adverse distinction, and shall respect personnel, vehicles and premises involved in such operations.

Section 10
Entry into force

The present bulletin shall enter into force on 12 August 1999.

(*Signed*) Kofi A. **Annan**
Secretary-General

Appendix B

Convention on the Elimination of All Forms of Discrimination against Women

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility

between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and

treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5
States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6
States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8
States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9
1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10
States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the

achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to

combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and

equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention,

there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22
The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Appendix C

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

The General Assembly,

Reaffirming the Vienna Declaration and Programme of Action and the Beijing Declaration and Platform for Action,

Recalling that the Beijing Platform for Action, pursuant to the Vienna Declaration and Programme of Action, supported the process initiated by the Commission on the Status of Women with a view to elaborating a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women that could enter into force as soon as possible on a right-to-petition procedure,

Noting that the Beijing Platform for Action also called on all States that have not yet ratified or acceded to the Convention to do so as soon as possible so that universal ratification of the Convention can be achieved by the year 2000,

1. *Adopts and opens for signature, ratification and accession* the Optional Protocol to the Convention, the text of which is annexed to the present resolution;

2. *Calls upon* all States that have signed, ratified or acceded to the Convention to sign and ratify or to accede to the Protocol as soon as possible;

3. *Stresses* that States parties to the Protocol should undertake to respect the rights and procedures provided by the Protocol and cooperate with the Committee on the Elimination of Discrimination against Women at all stages of its proceedings under the Protocol;

4. *Stresses* also that in the fulfilment of its mandate as well as its functions under the Protocol, the Committee should continue to be guided by the principles of non-selectivity, impartiality and objectivity;

5. *Requests* the Committee to hold meetings to exercise its functions under the Protocol after its entry into force, in addition to its meetings held under article 20 of the Convention; the duration of such meetings shall be determined and, if necessary, reviewed by a meeting of the States parties to the Protocol, subject to the approval of the General Assembly;

6. *Requests* the Secretary-General to provide the staff and facilities necessary for the effective performance of the functions of the Committee under the Protocol after its entry into force;

7. *Also requests* the Secretary-General to include information on the status of the Protocol in her or his regular reports submitted to the General Assembly on the status of the Convention.

28th plenary meeting

6 October 1999

ANNEX
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women4 ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

(*a*) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(*b*) It is incompatible with the provisions of the Convention;

(*c*) It is manifestly ill-founded or not sufficiently substantiated;

(*d*) It is an abuse of the right to submit a communication;

(*e*) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, withinsix months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.

2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

Article 15

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.

2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

(*a*) Signatures, ratifications and accessions under the present Protocol;

(*b*) The date of entry into force of the present Protocol and of any amendment under article18;

(*c*) Any denunciation under article 19.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article25 of the Convention.