

# The Price of Peace:

The case of sexual exploitation in UN peacekeeping  
missions

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## Abstract

This paper examines the correlation between a United Nation (UN) peacekeeping presence and the emergence of a vast and exploitative sex industry. By examining the case studies of Bosnian and Herzegovina and West Africa, I demonstrate that sexual exploitation, rape, trafficking in women and children often co-exist alongside peacekeeping missions. The recent prevalent concerns that the United Nations High Commissioner for Refugees (UNHCR) staff have been involved in sexual exploitation of refugees will also be investigated. The paper highlights the inadequate accountability system in the UN structure which allows its employees to escape prosecutions and questions whether this results in the charge of impunity by the UN. This paper identifies the need for an effective mechanism to fully monitor the activities of the UN and UNHCR's personnel. I address the issue of individual criminal responsibility of UN peacekeeping personnel and UNHCR staff by systematically examining existing and potential legal mechanisms to bring perpetrators of these crimes to justice. Having addressed individual criminal responsibility, I question the legal status of the UN as a subject of rights and duties under international law, in order to explore the possibility of holding the UN and the UNHCR accountable for the acts committed in a territory where it is in *de facto* control. Some amendments will be proposed to attempt to bridge the gaps in the law in order to make UN peacekeepers and UNHCR staff more accountable for their acts. Lessons learnt from past experiences in peacekeeping missions will be discussed and challenges for future implementations to combat and prevent the problem of sexual misconduct will be formulated.

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## Abbreviations

ACGE	Academic Consortium for Global Education
DPKO	Department of Peacekeeping Operations
ECOMOG	Economic Community of West African States Monitoring Group
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Person
IGO	Inter-Governmental Organisation
IPTF	International Police Task Force
ITA	International Territorial Administration
NGOs	Non-Governmental Organisations
NATO	North Atlantic Treaty Organisation
OIOS	Office of Internal Oversight Services
PKO	Peacekeeping Operation
PK	Peacekeepers
TNC	Transnational Corporation
TraCCC	Transnational Crime and Corruption Centre
UN	United Nations
UN/OHCHR	United Nations Office of the High Commissioner for Human Rights
SFOR	NATO –led Stabilization Force
SRSG	Special Representative to the Secretary General
UNAMSIL	UN Mission in Sierra Leone
UNHCR	United Nations High Commissioner for Refugees
UNICRI	UN Interregional Crime and Justice Research Institute
UNMIBH	United Nations mission in Bosnia and Herzegovina
UNMIK	United Nations Mission in Kosovo

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## Introduction

This paper examines the correlation between a United Nation (UN) peacekeeping presence and the emergence of a vast and exploitative sex industry. When I first decided to investigate further the news reports concerning the allegations of UN peacekeepers involved in sexual misconduct and the prevalent concerns over United Nations High Commissioner for Refugees (UNHCR) personnel being involved in sexual exploitation, I assumed, like many, that it was a problem of ‘rogue’ individuals within a predominately ‘good’ organisation.<sup>1</sup> However after researching the issue more I found firstly that the problem was significantly more prevalent than I had initially imagined. Secondly, the problems seemed to be exasperated by the fact that men could commit such acts with little if any repercussions. The assertion that UN employees are capable of violating human rights is not simply a result of that old maxim of political liberalism

“Where there *can* be an abuse of power, there *will* be an abuse of power.”<sup>2</sup>

The scope of the problem appears to be not only confined to these abuses of power but also the acute failings in the organisation, accountability and instruments of the UN. In essence the problem seems to stem from a failing in the structure of the UN system, namely a lack of accountability of the employees as well as of the actions of inter-governmental organisations (IGOs) more generally. This exists concurrently with the wider view bounded within the last decade by international lawyers and international relations theorists whom have questioned and discussed the accountability of IGOs more critically.<sup>3</sup> It is this problem of a lack of accountability within the UN system and inter-governmental organisations more generally that I wish to address.

The proliferation of civil wars over the past decade has produced a growing number of complex humanitarian emergencies and has changed the traditional role of peacekeeping so that now the UN may operate in these previously sovereign territories. Traditionally any event taking place within the territorial jurisdiction of a particular state, regardless of how savage or damaging these policies and practices happened to be, were regarded and treated as

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<sup>1</sup>G. Verdirame, ‘Compliance with human rights in UN operations’, in *Human Rights Law Review*, Volume 2, No 2, 2002 p.265.

<sup>2</sup>*Ibidem.*, p.267.

<sup>3</sup> See K. Wellens, *Remedies against international organisations*, U.K. ; New York : Cambridge University Press, 2002.

supremely an ‘internal affair’, with the state answerable to no one but itself and especially not to the remit of the UN. Today in an era of globalisation it has become increasingly clear that the principle of responsibility must now be addressed, applied not only to states but also to all of those actors which play a significant part in national and international affairs: rebel groups, political leaders and parties, warlords and military factions, religious bodies and multinational corporations.<sup>4</sup> However one of the largest types of international actors, namely UN and UNHCR still remain to operate in a grey area, often being accountable to no one.

In the past decade, increasing numbers of accounts have emerged of violations committed by peacekeepers against civilians, during peacekeeping operations. When reports first began coming to light in 1997 about atrocities committed by UN peacekeepers on a mission in Somalia, many believed it was an isolated occurrence amid unique circumstances. However to date, violations by peacekeepers, particularly those involving sexual exploitation and misconduct have been documented in Bosnia and Herzegovina, Cambodia, the Democratic Republic of Congo, East Timor, Kosovo, Rwanda and more recently in West Africa; Sierra Leone, Guinea and Liberia.

By focusing on the extent to which UN peacekeepers and UNHCR staff are involved in trafficking in persons and sexual misconduct, I hope to localise why these IGOs have had trouble in keeping its operations to account. First, in the case of trafficking related activities for the purpose of forced prostitution by UN peacekeepers, using Bosnia and Herzegovina as a case study. Secondly I will look at the situation in West Africa, looking particularly at the cases in Sierra Leone, Guinea and Liberia. In the West African case study I will examine the allegations of cases of sexual exploitation of refugees by UNHCR staff and peacekeeping troops in post conflict situations. Bosnia was selected as one of the case studies as it has long been an established problem in Bosnia thus it provides an informative example of how the arrival of peacekeepers can lead to the emergence of a vast and exploitive sex industry. Thus the Bosnian case study will serve to illustrate the extent of the problem in all its manifestations. Also, due to this longer timescale of the peacekeeping presence and thus the resulting problem in Bosnia, more information was available concerning the situation. A host of actors have recently begun to address the issue; IGOs, non-governmental organisations (NGOs) and the media have started to make a concerted effort to combat the problem in South East Europe region. The situation in West Africa is interesting as it was one of the more

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<sup>4</sup>Ralph Wilde, ‘Quis Custodiet Ipsos Custodes? Why and How UNHCR Governance of “Development” Refugee Camps Should be Subject to International Human Rights Law, in 1 Yale Human Rights Development L.J. 5(1998), p.107.



recent examples of this problem and it gained a great deal of media attention early last year, provoking a public reaction from the United Nations. Also both case studies had different groups of victims, the Bosnia case study focuses on the issue of trafficking for the purpose of forced prostitution therefore the victims were trafficked from countries outside of Bosnia. However the West African case study focuses on sexual exploitation of the refugee population and IDPs in UNHCR camps.

The case studies serves to provide the context for a discussion on UN structure and accountability, my second chapter questions why despite many reported cases of these events there have been so few prosecutions and whether this results in the charge of impunity by the UN. I will then systematically examine existing and potential legal mechanisms to bring perpetrators of the crimes described in the case study to justice. This involves looking at the efficiency of existing legal methods of justice and then I will explore other possible legal methods that could be used to make these perpetrators responsible for their acts. In my third chapter I will look at the problems with the lack of accountability for IGOs in general and I will explore the possibility of holding them responsible for the acts committed in territories where they are in *de facto* control. My fourth chapter will focus on the preventive measures the UN and the UNHCR as well as the international community more generally, have adopted to combat and prevent the problem of sexual misconduct. Finally in my fifth chapter I will propose some recommendations and amendments to attempt to bridge the gaps in the law in order to make UN peacekeepers and UNHCR staff more accountable for their acts. Lessons learnt from past experiences in peacekeeping missions will be discussed and challenges for future implementations to combat and prevent the problem of sexual misconduct will be formulated.

## Chapter 1 - Case Studies

In this chapter I will examine the extent to which United Nations peacekeepers and UNHCR staff are involved in sexual exploitation. The chapter serves to demonstrate the tragic consequences of international peacekeepers outside of their remit, where they are sent to bring law and order to a war torn country but with it create new demands for sex, and the emergence of a vast and exploitative sex economy. The consequences of these emerging sex networks used by peacekeepers are tremendous, from severe psychological damage to women and girls often resulting in a border-defying spread of sexually –transmitted diseases as well as a generation of children sired and abandoned by peacekeepers.<sup>5</sup> This chapter details in two case studies, trafficking related misconduct of peacekeepers in Bosnia as well as the plight of West Africa in relation to sexual exploitation of refugees by UNHCR staff and UN peacekeeping troops in post conflict situations. What is common theme to both cases is that sexual exploitation is not just rife on the side of the militia's involved but on the peacekeeping troops whose mandate is to create stability and lastly order.

### 1.1 Bosnia and Herzegovina

#### 1.1.1 Background to the situation in Bosnia and Herzegovina

The history of the UN presence in Bosnia and Herzegovina provides an informative example of how the sex industry was able to emerge. It is valuable first to understand the history and context of the situation. Following four years of brutal war, the parties engaged in the Bosnian conflict signed the Dayton Peace Agreement in Paris on December 14, 1995.<sup>6</sup> One of the key components to the agreement was the creation of a UN police monitoring unit and this consequently led to an influx of international peacekeepers, international police, and civilian contractors. The structure set out in the agreement for the International Police Task Force (IPTF), was given responsibility for monitoring and advising local Bosnian police.<sup>7</sup> In addition to this the SFOR, a NATO-led force composed of predominately NATO members

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<sup>5</sup>See A. Agathangelou, 'Desire Industries: Sex Trafficking, UN Peacekeeping, and the Neo Liberal World Order, in *The Brown journal of World Affairs*, Vol X Issue I Summer/Fall 2003, p.135.

<sup>6</sup>The General Framework Agreement for Peace in Bosnia and Herzegovina, at (retrieved June 7, 2003) [http://www.ohr.int/dpa/default.asp?content\\_id=380](http://www.ohr.int/dpa/default.asp?content_id=380) (retrieved June 7, 2003).

<sup>7</sup>In January 2003 the IPTF the European police took over the IPTF

had military troops, civilian, and contract personnel were stationed in the area.<sup>8</sup> The American contractor DynCorp also contracted a substantial number of peacekeepers.<sup>9</sup>

An understanding of the social and political conditions that arose during the war in Bosnia aids to explain the reasons for the development of the sex slave trade. An important factor was the economic crisis in Eastern Europe, causing extreme poverty thus motivated traffickers to earn money by capitalising on the demand for women as sex slaves in Western Europe and in Bosnia. During the UN peacekeeping operation there operated an entrenched war-lord system of power in Bosnia. This contributed to the lack of a functioning criminal justice system, allowed for a sex trade to develop. The prostitution trade in general, and trafficking of women for forced prostitution are controlled by organised crime and war lords, most of whom came to power as aggressive and ruthless military or militia commanders during the war. Their influence covers the entire Balkans region and their organisations are the dominant power in Bosnia, controlling and infiltrating the political and criminal justice systems at all levels.

The government of Bosnia has ratified the Trafficking Protocol, to prevent, suppress and punish trafficking in persons, especially women and children, which supplements the UN Convention against Transnational Organised Crime.<sup>10</sup> Article 3 (a) of the Trafficking Protocol defines trafficking in persons as

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of 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.”

It also defines “exploitation” to 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.”

The trafficking protocol outlines three goals: to prevent and combat trafficking in persons,

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<sup>8</sup> The U.S. contingent to SFOR is administered by the Department of Defence.

<sup>9</sup> Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution, Human Rights Watch, vol. 14. N0 9 (D) – November 2002, p.62.

<sup>10</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

especially women and children; to protect and assist victims of such trafficking, with full respect for their human rights; and to promote cooperation among states parties in order to meet those objectives.<sup>11</sup> Currently both the Bosnian government the UN peacekeeping operation has been relatively unsuccessful at combating the organised crime problem and the Bosnian criminal justice system is still not functional to the level necessary to confront the problem.<sup>12</sup>

Although using the services of a prostitute is not a criminal offence under the laws of either entity, the facilitation of prostitution and the operating of brothels are illegal.<sup>13</sup> By taking part in trafficking related activities peacekeepers (PKs) violate their code of conduct as well as undermine law enforcement. Also, through their work and training PKs should be informed or be aware that the brothels contain trafficked women. What is most critical is that the very presence of PKs in the clubs/brothels as clients discourages trafficked women and girls from seeking help and sanctuary international police stations.

### **1.1.2 Peacekeepers and the sex industry**

*“[Sex trafficking is the] dirty secret of UN interventions around the world – the nasty underbelly that no wants to confront”<sup>14</sup>*

Reports, such as the Graca-Machel study, on the impact of armed conflict on children, have documented a corresponding rise in sex trafficking of children and women in places where there is a peacekeeping presence.<sup>15</sup> Two observations characterise the relations between peacekeeping operations (PKOs) and trafficking in persons. First in contemporary PKOs as in Bosnia and Herzegovina, the international community is the primary, or sometimes sole, source of law enforcement, making PKOs the principal enforcement authority for combating trafficking.<sup>16</sup> Second, because PKs are paid at a high wage in the context of the localities they serve in, they knowingly or unknowingly serve as a primary source of demand for trafficked

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<sup>11</sup> Article 2 of Trafficking Protocol.

<sup>12</sup> Deposition by David Lamb as cited in “The UN and the sex slave trade in Bosnia: Isolated case or larger problem in the UN system? , Hearing before the Subcommittee on International operations and human rights of the committee on international relations house of representatives”, April 24, 2002, Serial No. 107-85, P.30.

<sup>13</sup> Ibidem. p.49.

<sup>14</sup> Marting Vanderberg, Director of the Women’s Project for Human Rights Watch.

<sup>15</sup> Graca-Machel study, on the Impact of Armed Conflict on Children

[http://www.unicef.org/graca/a51-306\\_en.pdf](http://www.unicef.org/graca/a51-306_en.pdf)

<sup>16</sup> Trafficking, Slavery And Peacekeeping, The Need For A Comprehensive Training Programme, A Conference Report, UN Interregional Crime And Justice Research Institute, Turin, Italy May 9-10, 2002.

persons in brothels. In a conference report focussing on trafficking, slavery and peacekeeping,<sup>17</sup> PKO involvement was summarised into two types. The first type included activities that PKs engage in such as purchasing sex or using domestic labour, that can and often do support the trafficking industry. This example was common in both Bosnia and West Africa. The second type of involvement, which occurs less often than the former according to experts, is PKs actually engaging in trafficking in persons.<sup>18</sup> Examples include PKO personnel arranging for trafficked women to be delivered to their residences and purchasing women and their passports from traffickers and brothel owners.<sup>19</sup> Sex trafficking by PKs undermines everything the UN mission stands for and seeks to achieve. The very notion of security, peace and justice are shattered, when peacekeepers commit these offences unpunished.

Since the entry of international personnel in 1995, there has been documented proof of the use of brothels by PKs.<sup>20</sup> According to NGO research, nightclubs appeared in villages with proximity to bases for PKs.<sup>21</sup> No clubs had existed in these villages before. While local citizens at first thought the nightclubs were a positive step and regarded them as a legitimate way to earn money from the PKs, they soon realised that the women working in the nightclubs were not being paid and in many cases were enslaved from outside Bosnia and Herzegovina. It was these discoveries that led local NGOs such as Lara<sup>22</sup> to focus on the trafficking issue. In 2001 the IPTF estimated that 30 per cent of the people using brothels were PKs, but that 70 per cent of the money brothels earned in a year came from PKs. The presence of IPTF monitors in the clubs as clients prevent trafficked women and girls from seeking safe haven in IPTF stations. The main reason for the continuation of the trafficking industry is that there seems to be an apparent demand for such services by peacekeepers and the potential economic gain for the traffickers. Another significant reason for the continuation of trafficking in the region was that until 1998 the United Nations mission in Bosnia and Herzegovina (UNMIBH) did not include trafficking as a priority issue. The attitude of the UNMIBH changed somewhat in 1998 when the United Nations Office of the High Commissioner for Human Rights (UN/OHCHR) created the gender coordination board that, among other responsibilities, developed a program on trafficking in persons.

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<sup>17</sup>Ibidem., p.7.

<sup>18</sup>Ibidem., p.13.

<sup>19</sup> Human Rights Watch Report, Vol 14. N0 9 (D) *op cit*, , p.49.

<sup>20</sup> Ibidem and Turin Conference Report, *op.cit*, p.13.

<sup>21</sup>The research was compiled by international NGOs such as La Strada Foundation and the International Human Rights Law Group and local NGOs such as Lara and Medica Zenica in Bosnia and Herzegovina.

<sup>22</sup> 'Lara', their president is Mara Radovanovic and they are based in Bijeljina, Bosnia and Herzegovina.

Unfortunately the implementation of the program failed to make a dramatic change to the situation.

In Bosnia, the trafficking and forced prostitution trade is not separate from a “legitimate” prostitution trade. Therefore, anyone who is patronizing prostitution in Bosnia is supporting the sex trade. This crucial fact is either not acknowledged or is ignored by many UN peacekeepers that involve themselves in prostitution in Bosnia.<sup>23</sup> Agathangelou argues peacekeepers’ complicit tolerance of or active participation in sex trafficking robs local citizens of any recourse to redress their grievances.<sup>24</sup> Not only have these citizens suffered the traumas of war, poverty, genocide, and dislocation but they have also witnessed the disintegration of local government and society. Agathangelou states

“In many case, international organisations, such as the UN, remains their only hope for a stable, responsive civil society. When this last resource fails, where can they turn? ...what kind of global governance is the international community licensing in the name of peace, justice, and order when women, girls, and boys are trafficked daily for pleasure and profit?”<sup>25</sup>

When prostitution and sex trafficking is tacitly excused by an organisation who seeks to better the political and social landscape this only heightens and globalises exploitative sex and violence. A BBC documentary<sup>26</sup> focusing on the issue of trafficking and the involvement of the international community, exposed how girls as young as 15 have been duped into working in brothels and forced to have sex with UN personnel in Bosnia.<sup>27</sup> The reporter, Sue Lloyd-Roberts, revealed how the ‘boys will be boys’ culture prevails within the UN international peacekeeping forces and police officers within all levels of the hierarchal structure. In the documentary, one tragic victim, a Romanian girl explains how she appealed for help to all the military but

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<sup>23</sup>Human Rights Watch Report, Vol 14. N0 9 (D) *op cit.*, p.30.

<sup>24</sup> A. Agathangelou, *op. cit.*, p.135.

<sup>25</sup> *Ibidem.*, p.135.

<sup>26</sup> BBC documentary “Boys will be boys, Sunday 16 June 2002, BBC Two broadcasted at 19:15, Reporter: Sue Lloyd-Roberts, Producer: Lode Desmet, Deputy Editor: Farah Durrani and Editor: Karen O’Connor

<sup>27</sup> Conducted by Sue Lloyd-Roberts in the BBC documentary, *Ibidem.*

“But most of them said that they don’t want to get in trouble because they’re not allowed to come here and if they try to help us they get in trouble”<sup>28</sup>

This sad tale illustrates two things, firstly, that the peacekeepers are clearly aware that what they doing is wrong, as it is the fear of being found out that deters them from helping these trafficked girls. Secondly, that even once they realise that the girl has been trafficked they fail to take any corrective action, making them party to the act of trafficking themselves by aiding the trafficking industry.

### **1.1.3 UN cover up?**

Despite the substantial amount of media attention and the numerous allegations of peacekeepers being involved in sexual misconduct and trafficking related activities, the head of UN. Mission in Sarajevo, Jacques Paul Klein, insists the situation is now under control, stating

"We have a zero tolerance policy here. Any officer, anywhere using the service of a prostitute, will be fired immediately and sent home."

However the BBC documentary revealed a different picture, it uncovered how high ranking UN personnel are turning a blind eye and even engaging themselves with prostitutes that have been trafficked against their will. A former DynCorp employee, Ben Johnson tells how the majority of DynCorp were involved in trafficking related misconduct and even his supervisor videotaped himself raping these girls. He explains how none of these men faced any repercussions for their violent acts and according to him

“the only zero tolerance DynCorp had was for anybody that tried to stop them from doing the stuff that they were doing they got rid of because they had zero tolerance for anybody that would stand in their way of slavery.”<sup>29</sup>

As already stated the IPTF estimate that 30 per cent of customers visiting these brothels are international and 70 per cent are locals. However Dzenana Karup-Drusko, a Bosnian investigative journalist,<sup>30</sup> disputes this claiming the surveys they do in military camps are probably inaccurate because international soldiers would not admit to visiting these clubs

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<sup>28</sup> Taken from transcript of BBC documentary, available on BBC website  
[http://news.bbc.co.uk/1/hi/english/static/audio\\_video/programmes/correspondent/transcripts/2043794.txt](http://news.bbc.co.uk/1/hi/english/static/audio_video/programmes/correspondent/transcripts/2043794.txt)

<sup>29</sup> UN and the sex trade in Bosnia, Serial No107-85 ,*op. cit.* p28.

<sup>30</sup> Interview with Dzenana Karup-Drusko, a Bosnian investigative journalist by Sue Lloyd –Roberts on the trafficking of women for the Correspondent website,  
'UN recommendation: Practice safe sex'  
<http://news.bbc.co.uk/1/hi/programmes/correspondent/2043864.stm>

since it is forbidden for them to do so. Another reason, which leads Dzenana Karup-Drusko to be sceptical of these figures, is that there have been several obvious cases and indications that high-ranking international officials were involved in trafficking incidents and they were associated with these girls. However instead of facing disciplinary action he claims

“every time - and I mean EVERY TIME - the affairs got hushed up. I can't remember any occasion whatsoever that any officer was held responsible and answered these claims. They were simply sent home and that's how every affair ends.”<sup>31</sup>

In his opinion the international community does not have access to exact figures because foreigners in this country do not *de facto* subscribe to the local laws, and the international community, in general, is not interested in judging their own people for what they consider to be not such an important or primary issue for them.

The BBC documentary also confirmed this belief by inferring that the UN is trying to cover up its acts and is not handling these allegations seriously. In the documentary, one girl, Alina explains how an Argentinean IPTF policeman offered to ‘rescue’ her by buying her freedom.

“He helped me; he came with the money...he talked to the boss and offered to pay for me.”<sup>32</sup>

What is intriguing about her story is that when the Head of the UN Mission, Jacques Paul Klein, came to Romania on official business, he sent for Alina to meet him in Bucharest, where he showed her an album with the photographs of twenty IPTF policemen. Of these men Alina identified seventeen who had frequented the bar/brothel. However despite having enough evidence on all of these men to repatriate them, they were only interested in the Argentinian that helped her, and he was the only one sent home for misconduct. Alina describes her disillusionment with the UN

“They promise to help us but they don’t. Only this one person who offered to help after being there for only two weeks. Whereas the IPTF had known about the girls and the problems but did nothing at all.”<sup>33</sup>

When Jacques Paul Klein was interviewed he denied this allegation and said the girl could only identify one man. The vast discrepancies between the Alina’s and Jacques Paul Klein’s

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<sup>31</sup> Ibidem.

<sup>32</sup> Taken from transcript of BBC documentary, available on BBC website.  
[http://news.bbc.co.uk/hi/english/static/audio\\_video/programmes/correspondent/transcripts/2043794.txt](http://news.bbc.co.uk/hi/english/static/audio_video/programmes/correspondent/transcripts/2043794.txt)

<sup>33</sup> Taken from transcript of BBC documentary, available on BBC website.  
[http://news.bbc.co.uk/hi/english/static/audio\\_video/programmes/correspondent/transcripts/2043794.txt](http://news.bbc.co.uk/hi/english/static/audio_video/programmes/correspondent/transcripts/2043794.txt)



statement are suspicious and further highlight the need for a more transparent reporting system. Obviously purchasing a human being is not the proper, legal way to free a person from debt bondage, particularly not for a police officer. IPTF monitors have the ability, indeed the obligation, to use legal methods such as police investigations and raids. However this legal way may prove difficult due to resistance within the UN ‘boys club’.

Despite numerous public statements by Jacques Paul Klein emphasizing his commitment to disciplining IPTF monitors for misconduct, internal affairs investigators described investigations that withered or disappeared as they moved up the chain of command. Former UN human rights investigator, senior IPTF officer David Lamb, explains how he himself experienced an astonishing cover up attempt that seemed to extend to the highest levels of the UN headquarters.<sup>34</sup>

“Whenever involvement of the UN personnel surfaced during these investigations, support from UN headquarters stopped. Headquarters went so far as to plan and carry out its own mass raids on brothels without involving or even consulting with the Human Rights Office ...and then publicized false information about the results in an effort to deflect criticism without having to effectively investigate the problem...Investigators found themselves under fire by the subjects of the investigation...What could have been a major break into the problem of UN involvement in the sex slave problem turned into another closed investigation with limited results and several more good investigators feeling defeated.”

This evidence suggests that officials in UNMIBH stalled and occasionally halted investigations.

Another example of the UN attempting to cover up its acts and investigators facing reprisal is the case of Kathryn Bolkovac, a former IPTF human rights gender officer. She was also featured on the BBC documentary because she was fired after reporting to her company and the U.S. State Department that other officers had participated in a prostitution racket. In 2002, she won a case of unfair dismissal against the State Department.<sup>35</sup> On October 9, 2000, Bolkovac, after reviewing transcripts of interviews with over thirty-five trafficked women, sent an e-mail to over fifty members of the UN mission in Bosnia and Herzegovina, including Jacques Paul Klein. The aim of this memo was to clarify exactly what trafficking and other associate terms were. The memo detailed explanation of trafficking routes and logistics in

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<sup>34</sup>In a statement given by him in ‘The UN and the sex slave trade in Bosnia...’, Serial No107-85., op. cit., p.31.

<sup>35</sup> Specifically, the lawsuit alleged unfair dismissal, breach of contract, and sex discrimination. E-mail communication from Karen Bailey, lawyer for Kathryn Bolkovac, September 9, 2001, on file with Human Rights Watch..

Bosnia and Herzegovina. The memo went on to describe human rights abuses against the victims, including rapes, beatings, and forced labour. In her definition of "clientele" she stated that it was alleged that IPTF, SFOR, local police, and international employees, as well as local citizens, made up some portion of the customer base for trafficked women.<sup>36</sup>

On October 31, 2000, the-deputy IPTF commissioner, Mike Stiers, told Bolkovac that she would be redeployed-in Bolkovac's opinion effectively demoted-to the Sarajevo regional office as of November 6, 2000 and would be forbidden to work in a human rights capacity for at least three months.<sup>37</sup> Stiers indicated that the redeployment was for "her own good" since the e-mail indicated she was "burned out." Before moving out of her office at headquarters, Bolkovac wrote an "investigative report" outlining allegations of international, SFOR, IPTF, and local police involvement in trafficking. In April 2001, DynCorp fired Bolkovac. The official reason for the firing was falsification of a timesheet. Bolkovac disputed this and argued the real reason for her dismissal for investigating, reporting, and requesting through internal affairs that investigations be done in regard to international involvement in trafficking.<sup>38</sup> On August 1, 2002, Bolkovac won a unanimous decision from a British employment tribunal that DynCorp had unfairly dismissed her.<sup>39</sup>

It seems as one high-level UN official stated,

"The attitude is that the dirty laundry should be washed inside the family... The people [fighting trafficking] are very good, but they meet resistance inside the IPTF."<sup>40</sup>

Evidently there is a definite lack of transparency within the internal investigations of the UN and this impedes to gaining vital evidence to secure prosecutions.

#### **1.1.4 Concluding remarks**

In February 2002, the UN oversight office concluded a follow-up assessment into UNMIBH and found

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<sup>36</sup> Internal e-mail correspondence from Kathryn Bolkovac to U.N. mission personnel, "Subject: Do Not Read This if You Have a Weak Stomach or Guilty Conscience," October 9, 2000, on file with Human Rights Watch, as described in Human Rights Watch report, vol. 14. N0 9 (D), *op. cit.*, 52.

<sup>37</sup> Human Rights Watch Report, *Ibidem*.

<sup>38</sup> E-mail correspondence with Kathryn Bolkovac, December 17, 2001, on file with Human Rights Watch.

<sup>39</sup> Employment Tribunals, *Bolkovac v. DynCorp Aerospace Operations (UK) Ltd*, "Unanimous Decision," Case no. 3102729/01, on file with Human Rights Watch. DynCorp has appealed the decision.

<sup>40</sup> Human Rights Watch telephone interview, high-level U.N. official [name withheld], March 14, 2002, as cited in Human Rights Watch Report, vol. 14. N0 9 (D), *op.cit.* p.56.

"no evidence of widespread or systematic involvement of UN police monitors in trafficking activities."

Although the report affirms that trafficking and sexual misconduct by IPTF monitors may not be widespread and systematic in all facets of the operation, the misuse of powers and responsibilities highlighted here as a prevalent problem needs to be addressed. The case study also serves to underscore the apparent impunity that exists within the UN structure. Once again the UN oversight office failed to address or respond to this criticism, which has already been voiced by NGOs.

## **1.2 West Africa**

Bosnia and Herzegovina is only one country in a chain of countries that are involved in the sex trafficking industry. The case study of West Africa involves two different groups of perpetrators of sexual exploitation. For the purpose of this study “sexual exploitation” will be defined as any abuse of a position of vulnerability, differential power, or trust for sexual purposes, this includes profiting monetarily, socially or politically from the sexual exploitation of another.<sup>41</sup> The first relates to the cases of sexual exploitation and rape by PKs from the Economic Community of West African States Monitoring Group (ECOMOG) contingent and UN Mission in Sierra Leone (UNAMSIL) PKs stationed in West Africa. It is important to differentiate the case here from that seen in Bosnia, as the victims here are the local refugee population, of which the PKs are mandated to protect, and not trafficked women as in Bosnia. The second category of sexual exploitation involves members of UNHCR who were accused of violating their position and exchanging sex for humanitarian commodities and services. There exists a third category of people involved in sexual exploitation in West Africa, namely, NGO aid workers, although it is noted that these too are equally grave allegations, it is not within the ambit of this paper to investigate their activities here.

### **1.2.1 Background**

The people of Liberia, Sierra Leone, and to a lesser extent Guinea, have suffered through twelve years of war and its insidious effects. These civil wars led to a tremendous influx of peacekeepers mandated to bring peace and stability to the region. These peacekeepers were composed of the ECOMOG contingent in Sierra Leone of approximately 12,500, and UNAMSIL, one of the largest UN missions which at its maximum deployment contained 17,275 peacekeepers.<sup>42</sup> UNAMSIL has reiterated that all military contingents serving under it receive systematic training on women’s and children’s rights as part of their induction. Codes of conduct are also distributed to all military and civilian personnel of UNAMSIL, and explained to each individual by human rights officers, child protection advisers and commanding officers. As in Bosnia a policy of “zero tolerance for any such acts perpetrated by anyone employed by or affiliated with the UN” is supposed to be in practice.<sup>43</sup> However as the Bosnia case study has already demonstrated the code of conduct and the actual reality of the situation appear to show very different situations.

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<sup>41</sup> Investigation into sexual exploitation of refugees by aid workers in West Africa, Report of the Secretary-General on the activities of the Internal Oversight services, 11 October A/57/465, p.22.

<sup>42</sup>UN Security Council resolution 1181, S/RES/1181 (1998), July 13, 1998.

The ongoing civil wars in these countries and the dangers faced by rebel groups, forced residents to flee their homes and led to the establishment of many UNHCR camps in Sierra Leone, Guinea and Liberia. Conflict and displacement inevitably erode and weaken, many of the social and political structures that are designed to protect members of the community. The usual social protections are not in place or are no longer functioning. In addition to this levels of protection and security are generally poor; justice and policing frequently do not exist in the displaced environment. Consequently, although in theory, each country is legally responsible for the refugees within its territory, due to erosion of the social, political and economic infrastructure, this has proved impossible. As a result the UNHCR has taken on the responsibility for the refugees within the camps.

Refugees and other citizens of the region have informed NGO workers over the years of their deep despair about deteriorating social values, disintegration of families, and loss of parental control over their own children-all caused by more than a decade of upheaval and atrocities.<sup>44</sup>. With the pandemics of war and death defying spread of STDs people of Liberia and Sierra Leone express sadness and a sense of foreboding about the breakdown of traditional customs, and their feeling of abandonment. Many confide privately that a sense of hopelessness permeates their lives even when fighting may gradually cease. Many Liberians and Sierra Leoneans believe that their lives and their society are in regression. Sexual exploitation of minors is, at least in part, an outgrowth of this extreme social disintegration. Given the prevailing sense of 'regression' and the ambivalence about sexual exploitation, it is pertinent to explore the impact of social disruption and poor infrastructure to which is aggravating the problem of early sexual abuses and the further increased spread of AIDS. These elements of disruption - wars, refugee movement within and across national boundaries, military and rebel movements, poor education, inexistent welfare provisions and the HIV/AIDS epidemic have produced a huge orphan population. The need to operate various forms of child protection placement arrangements under traditional, governmental as well as NGOs is apparent.

### **1.2.2 Peacekeepers and the sex industry**

Although a "zero tolerance" policy for sexual exploitation of women and children by UNAMSIL staff exists, UN policies remain extremely ambiguous in regulating interaction

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<sup>43</sup>'Statement by acting Special Representative of the Secretary-General, Mr Behrooz Sadry, in reaction to UNHCR-Save the children report', UN press release, February 28 2002.

<sup>44</sup>Such as US Committee for refugees (USCR).

between UN peacekeeping personnel and the local female population. This is evident with regard to sexual relations with women by UN peacekeepers in the host community through marriage during the terms of duty, cohabitation with local women in the premises in the form of maids, prostitution off duty and the minimum age of consent.<sup>45</sup> Often international staff in peace operations employ live-in domestic workers, many of whom are expected to do more than simply clean. Girls testified that “if we didn’t have sexual relations there were many girls who would”.<sup>46</sup> In Liberia alone 6,600 children have been registered as being fathered by peacekeepers between 1990 and 1998.<sup>47</sup> Peacekeeping leadership have also failed to develop any concrete policy in regards to the peacekeepers financial and legal duties and responsibilities for children parented by peacekeepers.<sup>48</sup>

The exchange of sex for money or gifts appeared to be widespread in Sierra Leone, the estimates of young girls involved in the sex trade are considered to be even higher than that seen in Bosnia.<sup>49</sup> The absence of viable employment opportunities has forced many Sierra Leoneans to resort to commercial sex activities as a means of survival. Thousands of young women actively walk the street at night in search of ‘customers’.<sup>50</sup> Peacekeepers are reportedly among the highest paying customers for sex with children, they pay from US\$5 up to \$300.<sup>51</sup> Some peacekeepers are alleged to pool money to obtain a girl and then all have sex with the same child.<sup>52</sup> Often girls, usually between 13-18 see this as the only way to earn money, one girl explains how

“Since UNAMSIL’s arrival, I have been able to make enough money to support my family. My clients are mainly peacekeepers. Of course I do not like to trade my body for money, but what choice do I have?”<sup>53</sup>

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<sup>45</sup> Elisabeth Rehn & Ellen Johnson Sirleaf, *Women War Peace*, Progress of the World’s Women 2002, volume 1, p.71.

<sup>46</sup> *Ibidem*, p.72.

<sup>47</sup> Kai Grieg, “War Children of the World”, War and Children Identity Project, Bergen, December 2001, 2001, 97-99, <http://www.warandchildren.org/>

<sup>48</sup> Elisabeth Rehn & Ellen Johnson Sirleaf, *op.cit.*, p.72.

<sup>49</sup> *Ibidem*.

<sup>50</sup> *Ibidem.*, p.57.

<sup>51</sup> The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Findings and Recommendations from Assessment Mission, Note for Implementing and Operational Partners by UNHCR and Save the Children-UK on Sexual Violence & Exploitation, February 2002, p.5.

<sup>52</sup> *Ibidem*.

<sup>53</sup> UNHCR and Save the Children-UK report..., *op.cit.*, p.5.

Whist the girls are aware of the exploitative nature of the exchange, they often felt it was necessary to receive food and other basic necessities and to pay for education.<sup>54</sup>

### 1.2.3 UN cover up?

Human Rights Watch has documented several cases of sexual violence by UNAMSIL peacekeepers however their reports suggest UNAMSIL staff are failing to investigate these allegations seriously.<sup>55</sup> One incident was the rape of a twelve year-old girl in Bo by a Guinean peacekeeper.<sup>56</sup> The Sierra Leone Police (SLP) interviewed the twelve-year-old victim and the Guinean peacekeeping, Sgt. Ballah and he was charged to court on the same day. However unfortunately, the SLP dropped the case and the offender was sent back to Guinea. This incident exemplifies how peacekeepers can abuse their position and escape with little redress or accountability. Human Rights Watch, also reported a case of a woman who was gang raped by two Ukrainian peacekeepers near Kenema.<sup>57</sup> Despite there being two witnesses of the rape, neither the SLP in Joru or UNAMSIL in Kenema conducted a proper investigation, claiming that the absence of the victim prevented them from conducting their investigation.<sup>58</sup> In another incident on June 22, 2002, a fourteen-year-old boy was allegedly raped by a Bangladeshi peacekeeper near the Jui transit camp for Sierra Leonean returnees located outside of Freetown in the Western Area.<sup>59</sup> The boy was fishing with some friends before the offender reportedly took the boy away and allegedly raped him. The victim's friends reported that the boy immediately told them what had happened after re-joining the group. The offender attempted to buy the boys silence for the equivalent of U.S \$0.25. The boy reported the rape to the SLP two days later and a medical exam was carried out on the same day and it confirmed penetration had taken place. The SLP were involved in the case for ten days, until it was taken over by the UNAMSIL Provost Marshal, (as all cases of misconduct are to be brought to the attention of a Provost Marshal for investigation). However despite the witnesses and the medical evidence the Provost Marshal concluded that there was no conclusive proof to link the crime to the perpetrator. After reviewing the case, the UNAMSIL force commander concluded that while the evidence was inconclusive, the circumstantial evidence was strong enough to conclude that the peacekeeper had violated military discipline, and as such issued an order of repatriation. The investigation by the police

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<sup>54</sup>Ibidem.

<sup>55</sup>'We'll kill you if you cry', sexual violence in the Sierra Leone conflict, *Human Rights Watch*, vol. 15, No.1 (A) – January 2003.

<sup>56</sup> Ibidem., p.48.

<sup>57</sup> Ibidem., p.49.

<sup>58</sup> Ibidem., p48.

and UNAMSIL was conducted in an insensitive manner and members of the Bangladeshi contingent spoke with the victim while the UNAMSIL investigation was ongoing, even though they should not have had access to him.<sup>60</sup> UNAMSIL failed to keep the victim and his family informed as to the outcome of the investigation, nor did they apologise or provide compensation to him.<sup>61</sup> There appears to be reluctance on the part of UNAMSIL to investigate and take disciplinary measures against the perpetrators. Instead, as was seen in the Bosnian case study, UNAMSIL are turning a blind eye to cases of sexual violence under the pretext that there is insufficient evidence. When UNAMSIL staff fails to investigate allegations of sexual violence by peacekeepers it indicates a lack of appreciation for the seriousness of the problem of sexual violence.

Although reports of rape by peacekeepers with the Economic Community of West African States Monitoring Group (ECOMOG) were rare, both ECOMOG and UNAMSIL peacekeepers have sexually exploited women, including the solicitation of child prostitutes in Sierra Leone.<sup>62</sup>

#### **1.2.4 Allegations of UNHCR staff involved in sexual exploitation**

In April 2002, a study conducted by two consultants, UNHCR and Save the Children,<sup>63</sup> revealed widespread sexual exploitation and abuse of refugees by humanitarian workers in three West African countries Guinea, Liberia, and Sierra Leone. The reports gained a substantial amount of media attention and tarnished the reputation and credibility of the UNHCR staff in West Africa. This resulted in the UNHCR requesting the Office Of Internal Oversight Services (OIOS) to review the allegations made in this first report.

UNHCR's program in West Africa in general during the 1990s has been criticised for being mismanaged, disorganised, poorly staffed, and appears to have accommodated corruption by local officials and some aid workers.<sup>64</sup> Close examination of the operation of the camps indicates that there are several major problems which could easily have created an environment in which pervasive exploitation of young refugees became possible.

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<sup>59</sup> Reported in Human Rights Watch report... vol. 15, No.1 (A), *op.cit.*, 52.

<sup>60</sup> *Ibidem.*, p.49.

<sup>61</sup> Human Rights Watch interview, Freetown, September 15, 2002, *Ibidem.*

<sup>62</sup> *Ibidem.*, p.4.

<sup>63</sup> UNHCR and Save the Children report... *op. cit.*



One of the central factors contributing to sexual exploitation of refugees is the extreme poverty and lack of livelihood options for all the refugees and IDPs.<sup>65</sup> Job opportunities for refugees generally were poor or non-existent and where they did exist they were primarily taken by men, leaving women very little authority or personnel access to funds or power.<sup>66</sup> It seems that parents and families were often aware of the exploitation but also felt it was the only option to gain an income so preferred to turn a blind eye or even encourage this activity.<sup>67</sup> Interviews with girls revealed that the refugees did not want to report UN or UNHCR officials who had sexually exploited them because they depended on the income that prostituting themselves brought. Consequently sexual exploitation cannot be addressed without providing alternative means and opportunities for earning an income.

Another key problem that contributed to sexual exploitation seemed to be insufficient food rations. When the small rations of food finished and the family needed more, the immediate response was to use their girls as a means to access money to buy food quickly. The management and delivery of humanitarian aid was also considered to be very problematic.<sup>68</sup> The children most vulnerable to sexual exploitation were unaccompanied minors, those without guardians.<sup>69</sup> This is because they often are unregistered and unaware of the relevant procedures, as a result they subsequently cannot access food rations and other basic necessities. Even registered refugees are often not aware of what they are entitled and need to be informed on their basic rights and entitlements. Many of the girls said they believed in order to obtain rations they had to provide sexual services. It was reported some UN officials have taken advantage of this power to withhold basic rations unless the girls offered them sex.<sup>70</sup> UN officials reportedly deny refugees these services using excuses such as “Your name is not on the list”, “the computer swallowed up your card”, or “your name did not come from head office” until sex is submitted.<sup>71</sup> The problem appears to be especially pronounced in refugee camps in Guinea and Liberia. Most of the allegations involved male national staff, trading humanitarian commodities and services, including oil, bulgur wheat, tarpaulin or plastic sheeting, medicines, transport, ration cards, loans, education courses, skills training

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<sup>64</sup>US Committee of Refugees background analysis: Blame all around – sexual exploitation of West African refugee children, ReliefWeb <http://www.reliefweb.int/>

<sup>65</sup>UNHCR and Save the Children report...*op. cit.*, p.6.

<sup>66</sup>Report of the Secretary -General on the activities of the Internal Oversight services ...*op. cit.*, note 38, p.11.

<sup>67</sup>UNHCR and Save the Children report...*op. cit.*, p.2.

<sup>68</sup>Ibidem, p.7.

<sup>69</sup>Ibidem, p.2.

<sup>70</sup>Audry Gillan and Peter Moszynski, ‘Aid workers in food for child scandal’, *The Guardian*, February 27,2002.

<sup>71</sup>UNHCR and Save the Children report...*op. cit.*, p.3.

and other basic services, in exchange for sex with girls.<sup>72</sup> One male refugee even went to the extent of saying that,

“if you do not have a wife or a sister or a daughter to offer...it is hard to have access to aid.”<sup>73</sup>

In order to combat corrupt and exploitive behaviour from UNHCR staff it is essential that information and education of refugee rights is provided. Refugee leaders in the region typically play key roles in helping inform refugees of their rights and conveying refugees' concerns to international aid workers and UN officials. However refugee populations in West Africa have regularly been betrayed by their own leaders, who are generally self-appointed, corrupt, and almost exclusively male. Reports have found that refugee leaders have participated in sexual exploitation of refugee minors themselves.<sup>74</sup> Therefore any solution to the problem cannot safely rely on refugee leaders to report future abuses to authorities. Another key problem was the lack of security within the camps, which consequently allowed these acts to go on.<sup>75</sup> Although security in the camps is the responsibility of the Government, security staff within the camps were inadequate. The IOIS investigation team did not notice any visible security in a number of camps and access to the camps by non-refugees is still possible, because of the porous perimeters.<sup>76</sup>

The mechanism for reporting abuses available to refugees were also deemed inadequate as there was little prospect of doing so in a way that was safe and confidential.<sup>77</sup> UNHCR protection officers are responsible with monitoring the protection needs of refugees, which encompasses protection problems of refugee minors victimized by sexual exploitation. However the inadequate size of UNHCR's protection staff throughout the African continent in general was a crucial factor, making this task particularly difficult. For example at the peak of the refugee crisis in Liberia, Guinea, and Sierra Leone, UNHCR deployed fewer than ten protection officers to monitor 700,000 refugees and returnees.<sup>78</sup> The shortage of UNHCR protection officers is caused by budget constraints imposed by donors as well as by the negligence of UNHCR headquarters officials in Geneva.<sup>79</sup> International donor countries

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<sup>72</sup> Ibidem.

<sup>73</sup> Ibidem.

<sup>74</sup> Such as US Committee for refugees (USCR).

<sup>75</sup> Report of the Secretary-General on the activities of the Internal Oversight services...*op.cit*, p.11.

<sup>76</sup> Ibidem, p.11.

<sup>77</sup> USCR background analysis: Blame all around – sexual exploitation of West Africa refugee children, 28 Feb 2002 p.2.

<sup>78</sup> Ibidem.

<sup>79</sup> Ibidem.

usually fail to give full funding to the budget request put forth by UNHCR. This has resulted in damaging the morale of UNHCR staff in the field, particularly those who are trying to improve programs and conduct the type of proper monitoring sorely needed in West Africa, as well as creating a double hardship on refugees. The funding shortages translate into understaffing, inadequate aid, and poor oversight at refugee camps: precisely the environment that has allowed sexual exploitation of refugees minors to flourish in West Africa. The case put here raises how the vulnerable situation of female refugees in the camps is ripe for sexual violence and exploitation by other refugees, peacekeepers and aid workers as sex is the only service left to trade with to combat hardships.

OIOS strongly confirmed that the issue of sexual exploitation is a significant one and that the conditions in the camps and in refugee communities make refugees vulnerable to sexual and other forms of exploitation, however they concluded that the problem was acute and not “widespread” as was reported.<sup>80</sup> Therefore the OIOS found the impression given in the consultants’ report that sexual exploitation by aid workers and in particular sex for services was misleading and untrue. The OIOS team stated the information contained in the study carried out by the two consultants could not be verified as the allegations of sexual exploitation were based on stories related by third parties or had not been confirmed by other types of evidence. In addition, it conducted its own independent set of interviews to find out whether there was sufficient evidence to prove that the sexual exploitation was common in West Africa. The team concluded that the conditions in the camps and in refugee communities made refugees vulnerable to sexual and other forms of exploitation,<sup>81</sup> however of the 43 cases investigated by the OIOS team, only 10 cases were substantiated by the evidence. What is more important to this study is that no allegation against UN staff members could be substantiated.<sup>82</sup>

It is important to examine how the two reports could produce such drastically different results. The main reason appears to be the limited scope of the investigation conducted by the OIOS.<sup>83</sup> For example generally cases of sexual violence upon adults and cases of sexual exploitation of internally displaced persons were also not considered. Cases highlighted in the report mainly dealt with grave sexual assault such as rape, often followed by pregnancy.

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<sup>80</sup> Report of the Secretary-General on the activities of the Internal Oversight services, *op. cit.*

<sup>81</sup> ‘Allegation of “widespread sexual exploitation “ in west Africa refugee camps not confirmed by United Nations investigation’, UN Press Release , 22 October 2002.

<sup>82</sup> Report of the Secretary-General on the activities of the Internal Oversight services, *op. cit.*

<sup>83</sup> Noelle Quenivet, ‘The limited scope of the investigation on sexual exploitation of refugees by humanitarian workers’, BOFAXE, Institute for international Law of Peace and Humanitarian Law of the Ruhr-University Bochum, No,228E, 07 November, 2002, <http://www.ifhv.de/>

Another troubling fact is that the team distinguished rape between refugees in which the perpetrator, hired by an international organisation, is physical stronger than the victim and rape between refugees in which the perpetrator abused his power resulting from the authority conferred on him by an international organisation. The distinction is rather ambiguous and is unnecessary and certainly should not be taken into account when examining a sexual violence case.<sup>84</sup> The OIOS was also requested to determine whether enough evidence existed of individual crimes to bring criminal and/or disciplinary charges against specific persons. However only one case out of the ten found led to criminal proceedings. By choosing a very restricted scope of investigation, the team gives the false impression that there are very few cases of sexual exploitation in refugee camps.<sup>85</sup>

### **1.2.5 Concluding remarks**

The Save the Children assessment suggests that UNHCR staff and peacekeepers use their relative wealth and power to sexually exploit girls. Exploiters appear to be able to sexually exploit and rape women and children with impunity since refugees felt unable to challenge the behaviour of agency staff, firstly, because of the power held by these staff to deny them food rations and secondly because of their dependence upon them to provide them with income through prostitution.<sup>86</sup> The lack of senior and international staff presence in the camps also reportedly allowed junior staff to behave with impunity. The Save the Children assessment describes a ‘conspiracy of silence’ that exists amongst agency workers and suggests that staff will not pass on information about a colleague involved in sexual exploitation for risk of being stigmatised and ostracised.

As for the involvement of peacekeepers, the human rights section of UNAMSIL should systematically monitor and report on sexual violence, including cases involving UNAMSIL personnel. UNAMSIL should establish an efficient mechanism in conjunction with the SLP whereby allegations of sexual violence by persons employed or affiliated with UNAMSIL reported to the police are immediately reported to the relevant UNAMSIL staff members, including the Provost Marshal and the gender specialist in the human rights section. UNAMSIL staff that commit sexual violence should be dismissed, and their misconduct properly recorded in their personnel file to ensure that they are not rehired in another UN mission. This might help to enforce the stated “zero tolerance” policy for sexual exploitation

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<sup>84</sup>Ibidem.

<sup>85</sup>Ibidem.

<sup>86</sup> UNHCR and Save the Children report...*op. cit.*, p3.

by UNAMSIL staff which appears to have had no teeth and therefore no impact on changing behaviour.<sup>87</sup>

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<sup>87</sup> Human Rights Watch report, vol. 15, No.1 (A), *op.cit.*, p.50.

## Chapter 2 –Legal mechanisms of accountability

This section from the outset recognises as Reinisch quite rightly points out

“Accountability can mean different things to different people. The legal profession may be tempted to equate it with liability or responsibility –terms that denote consequences of harmful or wrongful behaviour ...However, as political scientists justly remind them, accountability signifies a concept broader than that. It encompasses political, administrative, and various informal, non-legal mechanisms by which someone may be held answerable for something.”<sup>88</sup>

Indeed, when the first accounts began surfacing in 1997 concerning atrocities committed by peacekeepers on the mission in Somalia, the UN seemed to deny any responsibility or accountability, stating the organisation itself had no control or authority over troops of member states. Fundamental structural characteristics of the UN system itself render the UN incapable of policing itself. Consequently there was no collective responsibility or acknowledgement to the people of Somalia for the human rights violations committed by peacekeeping troops.<sup>89</sup> Today the UN, perhaps due to all the media attention recent cases have gained, have been forced to address these incidents and carry out investigations into allegations of trafficking related activities. However, although officially the UN appears to be actively attempting to combat this problem, as the Bosnian case study demonstrates, and as David Lamb purports there really is no sincere concerted effort, by the UN to really investigate this problem.<sup>90</sup>

In August 2000, the Brahimi Panel, which had been commissioned by Kofi Annan to evaluate the UN’s peacekeeping system, issued a comprehensive report. The Brahimi Report<sup>91</sup> contained candid criticisms about the effectiveness of the UN peacekeeping efforts and focussed on strategic, operational and organisational aspects rather than on legal ones. It emphasised

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<sup>88</sup>A. Reinisch, ‘Governance Without Accountability?’ 44 German Yearbook of International Law (2001), p.273.

<sup>89</sup> ‘Human Rights violations committed by peacekeepers’, Peace Women  
<http://www.peacewomen.org/un/pkwatch.html> April 11th 2003.

<sup>90</sup>In a statement given by him in ‘The UN and the sex slave trade in Bosnia...’: Serial No, op. cit. note., 10, p.31

<sup>91</sup> Full copy of report can be found at

[http://www.un.org/peace/reports/peace\\_operations/](http://www.un.org/peace/reports/peace_operations/)

“the essential importance of the UN system adhering to and promoting international human rights instruments and standards and international humanitarian law in all aspects of its peace and security activities”.<sup>92</sup>

However the report failed to adequately address the crucial issues of what happens when those charged with bringing stability to a situation become perpetrators of human rights violations.

When UN personnel violate human rights and commit crimes such as rape and trafficking, it has often proved difficult to bring them to justice. Despite the huge amounts of cases reported and investigated where peacekeepers are involved in trafficking related activities or sexual misconduct, these have not led to any prosecutions. The ultimate sanctions peacekeepers normally face is being removed from service for misconduct and repatriation. In fact, this even rarely happens for fear of adverse political consequences and because missions are typically understaffed. The UN Head of Mission does not have any authority to discipline troops, instead he/she only possesses general responsibilities for conduct,<sup>93</sup> which includes setting standards, training troops and investigating but not punishing misconduct.<sup>94</sup>

## **2.1 Existing legal methods to bring justice**

In this section I will examine existing legal methods to make those perpetrating such offences accountable for their actions. I address some of the issues which arise when deciding which legal methods are best suited to exercise jurisdiction over UN peacekeepers or UNHCR employees accused of trafficking related activity or sexual misconduct. In posing this question, from the outset I proceed on the basis that criminal justice dispensed through courts can be an appropriate way to combat these crimes, although it is recognised that it is not the only way. As Sands rightly states

“Criminal law in general – and international law in particular – will never be a pancea for the ills of the world”<sup>95</sup>

However it is a necessary starting point in the quest for justice and accountability, thus I will proceed by systematically examining the existing legal methods available.

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<sup>92</sup> Report of the Panel on United Nations Peace Operations” (the ‘Brahimi Report’), 21 August 2000, UN Doc. A/55/305,S/2000/809, at para. 6(e).

<sup>93</sup>Model Status-of –forces Agreement for peacekeeping operations, A/45.594,9 October 1990, para 15.

<sup>94</sup> Elisabeth Rehn & Ellen Johnson Sirleaf, *op.cit.*, p.72.

## 2.1.1 State jurisdiction

According to the theory of state responsibility the state is responsible to administer justice for any criminal acts that occur on its territory. However a fundamental failing of this theory is the existence of international immunity, which acts as a massive obstacle to securing justice.

### 2.1.1.1 Blanket immunity

Under the *1946 Convention on the Privileges and Rights of the United Nations*, UN personnel and experts have immunity from legal processes of the country they are serving in.<sup>96</sup> This blanket immunity enjoyed by UN employees means that local police, prosecutors, and judges lack jurisdiction to investigate or prosecute any of these cases. Thus this immunity consequently undermines the capacity of national law to regulate UN employees directly.

Looking specifically at the case in Bosnia, international actors have been granted additional privileges and immunities. Under the terms of the Dayton Peace Agreement, members of the IPTF are accorded the same status as officials of the UN.<sup>97</sup> This absolute immunity from criminal prosecution causes a great deal of frustration to state prosecutors. Unless the UN secretary-general waives immunity, IPTF monitors can never face charges in Bosnian courts for crimes they may have committed. Under Appendix B to Annex 1A of the Dayton Agreement, NATO military personnel are under the exclusive jurisdiction of their respective nations.<sup>98</sup> SFOR civilian personnel, although in principle possessing only "functional" immunity from prosecution, namely immunity only for acts related to their official duties, have been in effect extended full immunity by the Bosnian government. The European Police, (Europol), who took over the IPTF in January, 2003 have also been granted broad immunity. This has also been very controversial and some member states raised concern over the threat of possible fundamental human rights violations.<sup>99</sup>

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<sup>95</sup> Philippe Sands, 'International Law Transformed? From Pinochet to Congo...?', *Leiden Journal of International Law*, Vol 16 No1 p.38.

<sup>96</sup> 1946 Convention on the Privileges and Rights of the United Nations, Article V and VI, and Model Status-of-forces Agreement for peacekeeping operations, A/45.594,9 October 1990, para 15.

<sup>97</sup> As outlined in Sections 18 and 19 of the 1946 Convention on the Privileges and Immunities of the U.N

<sup>98</sup> General Framework for Peace in Bosnia and Herzegovina, "Agreement between the Republic of Bosnia and Herzegovina and NATO concerning the Status of NATO and its Personnel," Appendix B to Annex I-A, sec.7. Under Article VI, paragraph 11 of Annex I-A, all IFOR (now SFOR) personnel retain the privileges and immunities set forth in Appendix B.

<sup>99</sup> August Reinisch, 'The Accountability of International Organizations', *Global Governance* 7 (2001), p.133.



### 2.1.1.2 Difficulties with waiving immunity

The UN Secretary General has the power to waive immunity in exceptional cases however the waiving of immunity is very rare.<sup>100</sup> It is worth noting that ‘whether privileges and immunities exist and whether they should be waived the Secretary-General *may* take into account the views of the legislative body that appointed officials or experts on mission’<sup>101</sup> however as Wellens quite rightly states an *obligation* to the same extent would have been more effective.<sup>102</sup>

Both Human Rights Watch and the international police in Bosnia both agreed that immunity needs to exist.<sup>103</sup> Lifting immunity for the purposes of prosecution in Bosnia in practice would prove difficult. It is not a good idea primarily because the Bosnian criminal justice system simply does not function. They are not capable of prosecuting their own citizens and their own police officers and politicians and judicial officials who are involved in criminal activities. David Lamb argues what inevitably would happen is that

“an American IPTF officer, who may be involved in patronizing prostitution in Bosnia but had no strong connections with leaders in Bosnia or powerful organized crime leaders would end up being made an example of, and they would have fun doing it, to show how well they are doing, and those involved who had connections with organised crime and much worse certainly would not be prosecuted.”<sup>104</sup>

Consequently immunity is needed to some extent as it protects PKO personnel from politically –motivated prosecutions. Also there would be a real logistical problem involved with lifting the blanket immunity.

In an Advisory Opinion by the International Court of Justice, the Court gave some indication that in certain compelling situations a waiver by the Secretary-General was not required with regard to the immunity held by experts on mission. Unfortunately, the Court failed to give

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<sup>100</sup> Under sections 20 and 23 respectively of the Convention on the Privileges and Immunities of the U.N., the U.N. secretary-general shall have the right and the duty to waive the immunity of any official or expert on mission "in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the U.N."

<sup>101</sup> A/54/695 of 29 December 1999, p.9.

<sup>102</sup> K. Wellens, *op. cit.*, p209.

<sup>103</sup> As stated in ‘The UN and the sex slave trade in Bosnia...’, Serial No. 107-85 *op. cit.*, note 10

<sup>104</sup> *Ibidem.*, p.45.

any indication as to what qualified as a compelling situation.<sup>105</sup> To date there have been very few cases where immunity has been waived. In Kosovo, four waivers of immunity have been made, one involved a Rwandan accused of genocide, a second case concerned the rape of a fourteen year old trafficked girl<sup>106</sup> and another involved a Kenyan peacekeeper.<sup>107</sup> A more recent case, which is still ongoing, involves an Austrian national. The Austrian was a member of the UN Civilian Police (CIVPOL) in Kosovo, he allegedly beat an ethnic Albanian detainee for three hours, made him dig his own grave, and forced him to walk through a Serb village wearing a sign that read: 'I kill all Serbs!'<sup>108</sup> The officer was placed in investigative detention and measures were immediately taken by UNMIK to strip him of his immunity.<sup>109</sup> The investigation into the case confirmed that criminal acts amounting to torture had occurred. However according to reports the police officer illegally left the country and was driven by Austrian officers across the border into Macedonia, from where he was flown to Austria. UNMIK served an indictment to the Austrian government however as of writing this paper the Austrian government have refused to send him back to stand trial in Kosovo.<sup>110</sup> However a court in Orahovac, Kosovo has started the prosecution case without the Austrian.<sup>111</sup> Despite the failure in this case to gain a prosecution, it shows that the international community is progressively realising its commitment to fight impunity. It may set a new precedent for the Secretary General to use his powers to remove immunity where it would impede the course of justice, and this could have consequences on prosecuting perpetrators of trafficking related incidents.

### **2.1.1.3 The need to end impunity**

IPTF officers and SFOR contractors share one major characteristic, and that is impunity. UN Bosnian mission officials have admitted that repatriation serves as the only punishment for the

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<sup>105</sup> See Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 ICJ Rep. 100 (April 29, 1999).

<sup>106</sup> Turin conference report...*op. cit.*, p.28.

<sup>107</sup> As stated by Vandberg, Representative of Human Rights Watch in 'The UN and the sex slave trade in Bosnia...', Serial No.107-85, *op. cit.*, p.45.

<sup>108</sup> Human Rights Watch World Report 2003, Kosovo, <http://www.hrw.org/wr2k3/europe17.html#kosovo>.

<sup>109</sup> As allowed in UNMIK and KFOR personnel in Kosovo under UNMIK Regulation 2000/47. section 6.1

<sup>110</sup> Amnesty international Press release: 'Federal Republic of Yugoslavia (Kosovo): No impunity for the international community, 18 June 2002.

<sup>111</sup> Both the Austrian Ministry of Foreign Affairs and UNMIK refused to comment on the case when I contacted them.

involvement in traffic related misconduct. Clearly this is insufficient as one member of the Committee on international relations, House of Representatives stated

“Repatriation here or anywhere else becomes something slightly less than a slap on the wrist. They lose their job, but big deal. They have escaped what should be a major prosecution.”<sup>112</sup>

PKO missions do not administer corrective measures beyond repatriation to the home country. Even this action is often met with resistance due to the fears of offending the home state of the PK. The punishment does not meet the crime and, in turn, it fails to deter other PKs in carrying out similar crimes.

In sum immunity has acted as a barrier to any successful prosecutions by the host state, and it is very unlikely that the Secretary General will remove the blanket immunity as Member States would never agree to it. This has resulted in impunity.

### **2.1.2 Transnational jurisdiction**

According to the theory of transnational jurisdiction, each member state is responsible for any disciplinary or criminal action upon repatriation of UN staff. This is stipulated in Sections 18 and 19 of the Convention on the Privileges and Immunities of the UN, IPTF monitors do remain subject to penalties and sanctions under applicable laws and regulations of the UN and other states.<sup>113</sup> As we have seen immunity has been awarded to peacekeepers on the condition that in theory at least, in any case of any misconduct, these men are to be prosecuted in their home territory.

The human rights abuses and atrocities committed by “blue helmets” of various nationalities in Somalia created a precedent and led to the advancement of transnational state jurisdiction. Under traditional notions of international law, it would be the responsibility of the Somali Government to seek redress for the harms suffered by its own citizens. However this was not possible due to the lack of an organized government in Mogadishu. Consequently on the basis of these alleged acts of torture and other acts of barbarity performed by, Canadian, Belgian and Italian peacekeepers in Somalia, a number of soldiers were brought before military courts and commissions of inquiry and/or of the national courts to face penal laws of

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<sup>112</sup> The UN and the sex slave trade in Bosnia...’, Serial No.107-85, *op. cit.*, p.17.

<sup>113</sup> See General Framework for Peace in Bosnia and Herzegovina, Annex 11, Article 2(6).

their respective countries.<sup>114</sup> In these landmark cases, Belgium tried and convicted soldiers for torturing Somalis, in one incident by forcing a young Muslim man to eat pork, which is forbidden meat in the Islamic religion. Other method deployed by the Belgian peacekeepers to punish the Somalis involved forcing them to drink vomit and eat worms. A small number of cases were decided by national courts, Canada disbanded a whole unit whose soldiers were responsible for the beating to death of a teen-age thief and the shooting of other civilians.<sup>115</sup> A key factor that led to the prosecution of these men was the existence of video evidence of these acts. However the disciplinary proceedings against the UN peacekeepers represented an important development in transnational state responsibility.

Unfortunately as the Bosnian and West African case studies demonstrate despite a substantial amount of men being repatriated for trafficking related misconduct, the number of prosecutions has been practically non-existent, and the use of the transnational jurisdiction model has proved very rare and problematic. Similarly following the incidents arising in Somalia, although there were a few cases by the Belgium, Canadian and Italian judiciary other countries such as Pakistani peacekeepers accused of abuses in Somalia were not tried. Clearly this is not acceptable and a uniform policy for prosecuting these men needs to be developed and effectively implemented and enforced. However instead of addressing this the UN appear to prefer as one commentator said to buy into

‘a myth that once IPTF officers are repatriated to their home countries that disciplinary actions and prosecutions take place in their home countries’.<sup>116</sup>

Taking the example of the situation in Bosnia and Herzegovina, the official IPTF and UNMIBH policy on trafficking states,

"As regards subsequent action taken by sending state, it is up to the country concerned to initiate disciplinary action against the sanctioned police monitor."

However in practice this very rarely actually occurs. The key problem seems to be that the UNMIBH fail to follow up cases once IPTF monitors accused of misconduct are returned

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<sup>114</sup> See African Rights, *Somalia: Human Rights Abuses by the United Nations Forces* (1993), S. Bates, ‘Peacekeeping ‘torturers’ go on trial, *Guardian Wkly.*, June 29, 1997; R. Graham, ‘Italy to Probe Torture Claims’, *Financial Times* June 14-15, 1997.

<sup>115</sup> Canadian decisions in *R v Brocklebank*, Court Martial Appeal Court (1996) 134 Dominion Law reports (4<sup>th</sup>) 377, *R v Seward*, Court Martial Appeal Court (1997) 45 Administrative Law Reports (2d) 148; and the Belgian decision of the Cour Militaire of Brussels of 17 December 1997, *Journal des Tribunaux* (4 April 1998) 286.

<sup>116</sup> Ms. Vandenberg, ‘The UN and the sex slave trade in Bosnia...’, Serial No.107-85, *op. cit.*, p.45.

home. The majority of the times as soon as officers are repatriated any internal investigation ceases. There is no institutional procedure in existence which guarantees reports of misconduct reach the IPTF monitors local police stations or employers.

According to Bob Gifford of the U.S. State Department,

"There has been a practice at the UN where individuals who are being investigated have the opportunity to suddenly leave the country, and then the UN tends to drop its investigation."<sup>117</sup>

A UNMIBH spokesman told members of the press corps,

"You have to understand that once the UN sends these files to the individuals' countries, it is up to their governments to take action, and the UN is no longer in the picture."<sup>118</sup>

Similarly in Sierra Leone, UNAMSIL should ensure that states report within the prescribed six months on follow up to cases involving military personnel that have resulted in the alleged perpetrator being repatriated to his country of origin, in order to ensure that states prosecute the accused.<sup>119</sup>

Member governments of the UN do not have a direct role in the UN mission, but they do have control over monitoring the activities of their own contingents. Relying on the individual countries to deliver punishment may be a vain hope unfortunately there seems to be a lack of political will on the part of both the host and member states to share information in order to conduct a proper trial in the home state of the offending party. This has resulted in very few prosecutions actually taking place in the UN peacekeepers home state.

Prosecuting peacekeepers in their home state has also proved very challenging due to barriers within a states domestic law as can be seen in the example of the US. Here, a key problem relating to the prosecution of US IPTF monitors that were sent home is existing US law does not permit the prosecution of these monitors for criminal offences committed while part of a UN mission. In one case a US IPTF monitor purchased a woman, and was repatriated to be prosecuted in the US. However despite cases being forwarded to the State Department, the Department of Justice determined that the cases were not within the jurisdiction and therefore were not prosecutable in US courts. The Department of Justice stated that they had attempted to address this situation, by drafting legislation that would allow such a prosecution in US

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<sup>117</sup> Testimony of Bob Gifford, Subcommittee on International Operations and Human Rights, in The 'UN and the sex slave trade in Bosnia...', Serial No.107-85, *op. cit.*, p.45.

<sup>118</sup> U.N. joint press conference, July 26, 2001, Sarajevo.

courts in the future. This legislation will also address certain other aspects of sexual behaviour overseas that is illegal and unacceptable, particularly with regard to sex tourism.<sup>120</sup>

However recently, UN policy appears to have acknowledged the failings of the system and the need to strengthen the existing policy.

"The United Nations does not have the legal authority to take punitive measures against civilian police monitors made available by Member States for United Nations peacekeeping operations, and the disciplinary follow-up to their misconduct is the responsibility of the contributing countries. The options available to the United Nations in such cases are limited, therefore, to the administrative action of repatriation with the recommendation to the national authorities concerned to take the appropriate action against the individual in question. There is now a procedure in place to make the results of internal investigations routinely available to contributing countries for follow-up action. However, the mechanisms for ensuring follow-up by the authorities of the contributing countries need to be strengthened. We are aware of this need and we are trying to meet it."<sup>121</sup>

A key problem involved in prosecuting a peacekeeper in their home territory involves presenting evidence and witnesses. This would require an investigator to gather evidence and witnesses to testify in the state where the act occurred and this can prove potentially very costly and we have already seen that this is particularly difficult to do as investigators often face opposition and reprisal within both the local and UN system.<sup>122</sup>

A major flaw in the transnational state responsibility model or more specifically, the judicial systems of the sending states is if these acts are addressed at all in the national system, they are far removed from those most affected. Access to justice for the victims of these atrocities in any form, has not been discussed, not even as a theoretical issue.<sup>123</sup> As a result, this system fails to offer any redress to the victim in terms of compensation, and often the victim is never kept informed of what happened to their perpetrator.

In sum, the transnational model although seems to be a good idea in theory appears to be very ineffective in practice. It has proved to be very problematic and a uniform policy needs to be made available to prosecute perpetrators of these crimes and human rights violations.

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<sup>119</sup> Human Rights Watch report, *op.cit.*, vol. 14. N0 9 (D), p.50.

<sup>120</sup> 'UN and the sex slave trade in Bosnia...', Serial No.107-85, *op. cit.*, p.44.

<sup>121</sup> Letter to Human Rights Watch from Andrei Shkourko, senior political affairs officer, April 4, 2002.

<sup>122</sup> David Lamb, 'UN and the sex slave trade in Bosnia...', Serial No.107-85, *op. cit.*, p.46.

<sup>123</sup> Mark, Gibney, Katarina Tomasevski, Jens Vedsted-Hansen, 'Transnational State Responsibility for Violations of Human Rights', *Harvard Human Rights Journal*, vol 12, Spring 1999, p.293.

### 2.1.3 Universal jurisdiction

Having demonstrated that the principle that a state may exercise transnational jurisdiction or ‘long arm’ criminal jurisdiction over its own nationals is substantially flawed in practice, I will now look at a more recent idea. That is to say that certain crimes are so horrendous that the international community has determined that any state is entitled to exercise jurisdiction over them, in the quest to avoid impunity, this is known as the principle of universal jurisdiction.<sup>124</sup> Universal jurisdiction relies on three principles, firstly that there are certain crimes that are deemed so serious that they are treated by the international community as being international crimes over which any state may, in principle, exercise jurisdiction.<sup>125</sup> Secondly, that national courts, as opposed to solely international courts only, have an *erga omnes* obligation, or owe a duty to the whole international community to investigate and prosecute crimes against humanity, genocide and torture, irrespective of any direct connection with the acts. Thirdly, that in respect of these crimes it can no longer be assumed that immunities will be accorded to former sovereigns or high officials, and the 1984 Torture Convention is incompatible with such immunities.<sup>126</sup>

Consequently if the home state of a peacekeeper fails to prosecute or investigate cases of rape or forced servitude then in theory other states in the international community are under an obligation to provide justice. However this principle is normally only applied to the most heinous war crimes against humanity, and although rape is recognised as a war crime, cases as the ones documented would probably not satisfy the very high threshold to be regarded as a crime against humanity. The theory behind the universal jurisdiction approach is clear, that there is to be no impunity for torturers, wherever they are to be found. Therefore one could argue that trafficking victims are subject to torture and as already stated the 1984 Torture Convention is incompatible with any immunities, so in theory this could be a valid option that has yet to be evoked.

### 2.1.4 UN and UNHCR internal disciplinary measures

Apart from national and international laws, codes of conduct serve as soft law tool of ensuring accountability such as the UN Code of Personal Conduct for Blue Helmets.<sup>127</sup> However the impact of this is negligible as according to Radhika Coomaraswamy, the UN Special

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<sup>124</sup>Philippe Sands, ‘International Law Transformed? From Pinochet to Congo...?’, *Leiden Journal of International Law*, vol 16 No. 1, p.42.

<sup>125</sup> *Ibidem.*, p.37.

<sup>126</sup> *Ibidem.*

<sup>127</sup>HCHR, “Training Manual on Human Rights Monitoring”, Chapter XXII. p.456-458.

Rapporteur on Violence against Women, the code fails to sufficiently protect women from sexual exploitation and trafficking.<sup>128</sup> Whilst codes of conduct can be useful tools for deterring peacekeeping violations, this code is a minimum outline of basic human rights principles and may thus be found left wanting against grave violations on women, which do not seem to be referred to within the generalness of “immoral acts of sexual, physical or psychological abuse.” Other codes of conduct aiming to regulate the behaviour of peacekeeping personnel, particularly in field operations, are equally inadequate. For example, the Peacekeeping Handbook for Junior Ranks<sup>129</sup> are extremely ambiguous in regulating interaction between UN peacekeeping personnel gives no information on the legal repercussions of becoming involved with local female population. Instead it offers only the most general advice:

“Be forewarned of facing long sexual relationship, which may create long-lasting complications for you and others. Do not involve yourself with a sexual affair with any member of the local population.”<sup>130</sup>

The actual enforcement of these codes of conducts in missions have displayed mixed results. As already demonstrated in our case studies UNMIBH and UNAMSIL adopted a “zero tolerance” policy for staff members involved in trafficking or prostitution. However as already demonstrated “zero tolerance” does not always equate to the missions definition that all allegations of misconduct are to be investigated and disciplinary action is to be taken for those found guilty.

Following the disciplinary cases of the Canadian, Belgian and Italian peacekeepers for the human rights abuses and atrocities committed by them in Somalia, Frederic Megret and Florian Hoffmann remark

“a lingering feeling remained that the United Nations was being let-off a little too easily and that surely the choice between “nothing” and the law of contributing states was not the end of the story.”<sup>131</sup>

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<sup>128</sup>Radhika Coomaraswamy, “Sexual Violence During Wartime,” paper prepared for UNIFEM, January 2002 as cited in Elisabeth Rehn & Ellen Johnson Sirleaf, *op.cit.*, p.73.

<sup>129</sup> <http://www.reliefweb.int/training/ti96.html>

<sup>130</sup>Elisabeth Rehn & Ellen Johnson Sirleaf, *op.cit.*, p.73.



Where the UN effectively acts as a sovereign power, the potential for abuse and particularly human rights violations increase unless checks are mandated, clearly and seriously followed through. However although peacekeepers in Somalia may have evaded human rights standards by using the excuse that they were operating in a grey area whereby the legal regime of which was unclear, such a loophole is ever-tightening with the pressure of the United Nations new responsibilities.

Traditionally the UN has been very reluctant to acknowledge in explicit terms a legal obligation to comply with human rights, as was demonstrated from its refusal to formally adhere to the Geneva Conventions. As it officially cited

“the UN is not substantively in a position to become party to the 1949 Conventions, which contain many obligations...such as the authority to exercise criminal jurisdiction over members of the Forces”<sup>132</sup>

This meant UN peacekeepers operated in grey areas of international law, not strictly accountable to the Geneva Conventions, as only the representatives of UN member states, not international organisations were bound by these documents. However there is certainly a recent trend by these actors to incorporate, (admittedly to varying degrees), protection of human rights into their operational guidelines and directives. For example in August 1999, Secretary-General Kofi Annan ordered that all forces operating under UN command must abide by international laws which protect civilians and govern the conduct of soldiers in war.<sup>133</sup> The new rules were drawn up with the International Committee of the Red Cross and the wordings follows the rules of war set out in the four Geneva Conventions. This directive or executive order issued by the Secretary –General to all member nations was a response to the reports of serious human rights violations by peacekeepers in the Balkans, Africa, Cambodia and elsewhere. However a fundamental failing of this directive was that it does not give the United Nations the power to deal with violations, which are to be handled by national courts and instead the UN asks governments to report on how they have dealt with offending peacekeepers. Human rights activists feel this procedure does not really go far enough, as the

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<sup>131</sup> Frederic Megret, Florian Hoffmann, ‘The UN as a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities’, *Human Rights Quarterly* 2003 vol. 25 p.327.

<sup>132</sup> Legal Opinion of the Secretariat of the UN, Question of the Possible Accession of Intergovernmental Organisations to the Geneva Conventions for the Protection of War Victims, UN Jur. YB., 1972,153 as cited by August Reinisch, ‘Governance Without Accountability?’, op. cit., p.281.

<sup>133</sup> Observance by United Nations forces of international humanitarian law, UN, Secretary-General’s Bulletin, UN Doc. ST/SGB/1999,812; ILM, vol..38, 1999, 1656.

provision of giving national courts jurisdiction falls short of current humanitarian law.<sup>134</sup> It does not require that offenders be prosecuted and it limits prosecution to the courts of the offender's nationality, whereas the Geneva Conventions explicitly empower state parties to prosecute offenders whether or not the accused is a member of that state.”<sup>135</sup>

The immunities of UN officials do not operate within the internal system of justice in the UN Secretariat. The Joint Inspection Unit in its 2000 'Report on the Administration of Justice at the United Nations' has found the system at the UN to be 'slow, costly and cumbersome' and in 'in several significant ways, far less effective than it should be'.<sup>136</sup> A Report on the reform of the internal system of justice in the UN Secretariat was submitted by the then Secretary General in September 1995, but the proposals were never put into effect.<sup>137</sup> A key problem appears to be the failure of UN member states to recognise the jurisdiction of international administrative tribunals in the territory where there peacekeepers are serving in. In order to improve the efficiency of UN internal tribunals the jurisdiction of international administrative tribunals *ratione personae* should be widened.

The peacekeepers' codes of conduct and the resulting disciplinary measures both need to be strongly implemented and enforced in order to sufficiently protect women from sexual exploitation and trafficking, and for justice to be served. It is evident that in response to the experience in West Africa, UNHCR developed its own code of conduct to guide the behaviour and attitude of all UNHCR international and local staff. The code of conduct also encourages UNHCR staff to live up to the ideals of the UN. It explains the standards of conduct that all are expected to adhere to under the UN charter and the Staff Regulations and Rules. The High Commissioner, the chairman signed the code of conduct on 4 September, 2002. All UNHCR staff should have by now been asked to sign the new code.<sup>138</sup> However we have yet to see if this code of conduct has any actual impact on making UNHCR staff accountable for their actions.

### **2.1.5 Other existing methods of accountability**

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<sup>134</sup> As stated by Keneth Roth, executive directive of Human Rights Watch in Barbara Crossette, 'Global Rules Now Apply to Peacekeepers, Un Chief Declares', *New York Times*, August 12, 1999.

<sup>135</sup> *Ibidem*.

<sup>136</sup> A/55/57.p.vii.

<sup>137</sup> A/C.5/50/2 of 27 September 1995.

<sup>138</sup> UNHCR remedial actions and preventive measures against sexual exploitation and abuse of refugees, UNHCR Press Release, 22 Oct 2002  
<http://www.UNHCR.ch>.

UN missions such as United Nations Interim Administration for Kosovo (UNMIK) and indeed, the Security Council in turn proclaim the “applicability” of human rights standards by stipulating that

“in exercising their functions, all persons undertaking public duties or holding public office [in the respective territories] shall observe internationally recognised human rights standards”<sup>139</sup>

However the fact that human rights standards should be applicable fails to resolve the ambiguity in regards to their actual implementation. The status of international human rights standards before domestic courts is still a fundamental problem.

Bodies entrusted with human rights were set up in UN administrations, however their jurisdiction does not usually cover the activities of the UN administration.<sup>140</sup> For example, under the Dayton Peace Agreement, the Commission on Human Rights was established; it comprises the Office of the Human Rights Ombudsman, which later renamed itself Office of the Human rights Ombudsperson, and the Human Rights Chamber.<sup>141</sup> Although both the Ombudsperson and the Chamber can hear individual complaints, their jurisdiction *ratione personae* is limited to the parties to Annex 6 of the Dayton Peace Agreement, namely, the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republica Srpska.<sup>142</sup> This means that complaints against UNMBIH or SFOR would have to be declared inadmissible. This situation is particularly ironic as the international community has set up numerous human rights bodies, yet no mechanism exists for ensuring accountability for violations of fundamental rights perpetrated by the international authorities.

The Constitutional Court of Bosnia and Herzegovina challenged this exemption of UN bodies from the jurisdiction of national courts in situations in which they govern the territory. In a case that concerned the constitutionality of an act of the High Representative, the Court, while accepting that ‘the powers of the High Representative...as well as his experience of those powers are not subject to review by the Constitutional Court,’ affirmed that there are cases in which the High Representative intervenes ‘in the legal order of Bosnia and Herzegovina

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<sup>139</sup> UNMIK/REG/1999/1. 25 July 1999, UNTAET, Reg. No 1999/1, On the Authority of the Transitional Administration in Kosovo.

<sup>140</sup> Guglielmo, Verdirame, ‘Compliance with human rights in UN operations’, *Human Rights Law Review*, Volume 2, No 2, 2002 p.281.

<sup>141</sup> Annex 6, General Framework Agreement for peace in Bosnia and Herzegovina (“Dayton Peace Agreement”), Paris, 14 December 1995, 35 ILM 75 (1996).

<sup>142</sup> Article 2, Annex 6, Dayton Peace Agreement.

substituting himself for the national authorities' and acts 'as a an authority of Bosnia and Herzegovina'<sup>143</sup> Hence in these exceptional case the High Representative will be treated as a national authority and consequently will be accountable and subject to the same responsibilities as a state organ. This position is also consistent with the rules on state responsibility on the basis of which 'the conduct of an organ of a State be considered an act of the State under international law'.<sup>144</sup>

The situation in UNMIK represents a step forward.<sup>145</sup> The ombudsperson's office, established in June 2000, can

'receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution'.<sup>146</sup>

However the ombudsperson is significantly limited as he cannot investigate complaints about the actions of the Kosovo Force.<sup>147</sup>

Courts are beginning, albeit somewhat timidly, to assert the rule of law in respect of the activities of international organisations. An illustration of this is when the European Court of Human Rights noted that the establishment of international organisations could have 'implications as to the protection of human rights' and that, since these rights are not 'theoretical or illusionary, but...practical and effective', the attribution of responsibilities to an international organisation could not absolve states from their legal obligations under the Convention.<sup>148</sup> Even though ultimately this case attributed responsibility to member states the fact that it recognised that international organisations have responsibilities in regards to protecting human rights, is a small step forward.

It seems increasingly essential that impartial and independent accountability mechanisms to which individuals have access are established to reconsider and expand the notion of 'accountability'.

## **2.2 Potential legal mechanisms that could be implemented**

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<sup>143</sup> Request for the evaluation of constitutionality of the law on state border service of Bosnia and Herzegovina. Case U 9/00 (3 November 2000).

<sup>144</sup> Article 5, Draft Articles on State Responsibility provisionally adopted by the Drafting Committee of the International Law Commission on Second Reading (2000), UN Doc. A/CN.4/L.600.

<sup>145</sup> Guglielmo, Verdirame, *op. cit.*, p.282.

<sup>146</sup> UNMIK Regulation 2000/38, section 3.1.

<sup>147</sup> Guglielmo, Verdirame, *op. cit.*, p.282.

The existing methods that are used to secure justice and accountability in these cases have been argued here to be ineffectual in the ends they are designed to achieve. There are other potential legal options that are available, I will now examine the feasibility of implementing them for such cases.

### **2.2.1 The International Criminal Court (ICC)**

Although currently this is not a valid option due to the recent extension of immunity of UN peacekeepers from prosecution by the ICC. This may change as the Secretary-General, Kofi Annan, is very keen on removing the existing immunity. In a recent press conference he voiced concern that it might become an annual routine that could undermine the tribunal's and the Council's authority, as well as the legitimacy of UN peace operations.<sup>149</sup> Annan stated he did not believe the request was necessary because no UN peacekeeper had been "anywhere near committing the kind of crimes" falling under the ICC's jurisdiction, and the case was thus hypothetical and "highly improbable".<sup>150</sup> His belief that the case of a peacekeeper being tried before the ICC derives from the fact the jurisdiction of the ICC is limited to the most serious crimes of concern to the international community as a whole and this usually would not encompass those described above. However one could argue some of the more severe cases could be categorised under the Rome Statute as crimes against humanity under Article 7 1(g) encompassing 'Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity'. However this would probably be difficult to prove as the threshold to hear cases before this court is very high. Despite this human rights activists<sup>151</sup> have argued that the ICC does offer a means of ensuring the accountability of peacekeepers. In a Relationship Agreement between the ICC and the UN, the latter has promised to cooperate with and assist the work of the Court. Specifically, Article 19 of the Agreement which states that:

"...the Court exercises its jurisdiction over a natural person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and who...enjoys privileges and immunities in connection with his or her work for the Organization, the UN undertakes to cooperate with the Court in such a case or cases and, if necessary, will waive the privileges

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<sup>148</sup> *Waite and Kennedy v Germany* (2000) 30 EHRR 261 at para.67.

<sup>149</sup> 'Annan voices concern over extending UN peacekeepers' immunity from ICC', [UNNews@UN.org](mailto:UNNews@UN.org), 12/06/03.

<sup>150</sup> *Ibidem*.

<sup>151</sup> Such as Kenneth Roth, executive director of Human Rights Watch in Barbara Crossette, 'Global Rules Now Apply to Peacekeepers, UN Chief Declares', *New York Times*, August 12.

and immunities of the person or persons concerned in accordance with the provisions of the relevant instruments”

Whether Article 19 will ever be evoked remains to be seen, human rights activists are hopeful whilst international lawyers remain sceptical.

### 2.2.2 International criminal tribunals

The emergence of ad hoc criminal tribunals such as those established in the former Yugoslavia and Rwanda could potentially operate as a forum for complaints concerning abuses by peacekeepers to be heard. The Statutes of the International Criminal Tribunal for Rwanda (ICTR)<sup>152</sup> and for the former Yugoslavia (ICTY)<sup>153</sup> recognise the concurrent jurisdiction of national courts within their territories in relation to the crimes over which those two international criminal tribunals have jurisdiction. In both cases however the criminal tribunals will have primacy if they so decide.<sup>154</sup> Reinisch has convincingly argued the existing tribunals may represent an important though indirect way to contribute to securing the accountability of international organisations by making the individuals acting on their behalf directly responsible for alleged criminal acts.<sup>155</sup>

In the report of the commission of inquiry,<sup>156</sup> established to investigate armed attacks on UNSOM II personnel which led to casualties among them, it was observed that the UN has to bear responsibility for at least some of the basic state concerns traditionally appertaining to a government.<sup>157</sup> This demonstrates that the UN can in exceptional cases use its power to operate in an area outside of its traditional framework. One could argue because the UN investigated attacks on UN personnel, they have a parallel obligation to investigate cases of human rights violations to civilians by UN personnel, such as cases involving sexual exploitation and trafficking related issues. In a similar fashion the commissioning of a report concerning the 1999 NATO bombing campaign concerning whether to investigate the alleged serious violations of international humanitarian law by senior NATO officials represents a

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<sup>152</sup> UN Sec Res 955, (1994) 33 ILM 1598

<sup>153</sup> Adopted by UN Sec Res 827 (1993), (1993) 32 ILM 1203

<sup>154</sup> B.Brown, ‘Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals’, in the *Yale Journal of International Law*, (1998) 23, p.383, 386.

<sup>155</sup> August Reinisch, ‘The Accountability of International Organizations’, *Global Governance* 7 (2001), p.141.

<sup>156</sup> Report established pursuant to security council resolution 885 (1993).

<sup>157</sup> S/1994/653, para.253.

somewhat revolutionary development.<sup>158</sup> Although ultimately the final report to the prosecutor recommended not to investigate the allegations as a result of insufficient evidence, the case confirms that the jurisdiction of the ICTY extends over any individual accused of committing war crimes and other specifically mentioned serious international crimes in the territory. This would encompass trafficking, as slavery and rape are within this category, however sexual exploitation in the form of prostitution will most likely not reach the high threshold required for the case to be heard in these tribunals.

### **2.2.3 Special courts and truth and reconciliation committees**

Truth and reconciliation committees could encompass UN peacekeepers and UNHCR staff. Although they do not have judicial powers and so fail to prosecute the peacekeeper directly, they can serve to potentially help the women to heal their wounds and help them to forget the human rights abuses they have encountered. However the possibility of this is very unlikely. Firstly, because these courts are often established with the UN participation, hence realistically they are not going to use them to highlight violations by their own employees, as the UN would fear that this may undermine the legitimacy of UN peacekeeping missions. Secondly, the establishment of these courts are primarily to be used to end impunity of individuals who have taken part in the civil wars and not the international community.

In contrast to this the Special court in Sierra Leone does have judicial powers. However due to cost and other political reasons it only deals with the most grave war crimes, therefore the likelihood of the acts committed by UN peacekeepers and UNHCR staff reaching the court is again relatively low.

## **2.3 Concluding remarks**

Whether for the lawyers, politicians or lay-person, the need for clarification of the technical questions regarding issues of accountability that this section has raised has resulted in the identification of specific needs. By questioning further ‘When can immunity from jurisdiction be claimed? ...is universal jurisdiction applicable? ...is the ICC a potential forum for such complaints and finally is the emerging international criminal law sufficient in dealing with these crimes?’, notions of ‘organic’ law become central and more akin to what matters to the average person and specifically, the victims of these incidents. Their questions have

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<sup>158</sup> Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, 13 June 2000, available online at

largely been left unanswered: 'What does all this mean to me? Will the perpetrator be adequately punished and will justice be served? Will any form of compensation be granted? I support these views and further my own, for example, Will other peacekeepers or UNHCR staff be deterred from committing similar acts and operate within an actual zero-tolerance? Will the peacekeepers be accountable to the people in the territory they serve in? Similarly will a monitoring body be put in place to ensure UNHCR staff fulfil their role of granting refugees their rights instead of denying them? These proposed legal mechanisms should not be dealt in isolation and be fanned by specific grey areas. Access to justice is after all essential and should also mean that the victims needs to be integrated into any change of policy in its inscription as well as in its enforcement.



### Chapter 3 Can intergovernmental agencies be held responsible?

This section explores the legal possibilities of holding the UN, the UNHCR and other IGOs accountable to violations committed by its employees. The UN and the UNHCR traditionally enjoy jurisdictional immunity before the domestic courts of their member states under both conventional and customary international law. This clearly differentiates them from non-state actors like NGOs and transnational corporations (TNCs)<sup>159</sup>, and it is this jurisdictional immunity that has constituted a decisive barrier to remedial action for non-state claimants. Megret and Hoffmann's attempt to conceptualise the UN as a human rights violator, however they encounter obstacles regarding the fundamental UN structure, which needs to be revised before the UN can be held responsible for violations. When this claim of jurisdictional immunity before domestic courts is combined with inadequate alternative internal remedies it easily amounts to a denial of justice.<sup>160</sup> The central obstacle stems from UN not being party to any human rights instrument. For example, technical problems arise, because the UN is not a state and because the Universal Declaration or the Covenants are only open to states consequently the UN appears barred from being formally bound.<sup>161</sup> The traditional strict interpretation of the applicability of human rights standards to the UN, conveniently avoids addressing the issue of what to do in a situation where the UN, through acts committed by its employees, fails to abide to its human rights obligations. In reality it is this ambiguity concerning the applicability of human rights to the UN which is the greatest hurdle in determining whether the UN can be regarded as a human rights violator.

#### 3.1 Finding possible legal foundations to bind IGOs to human rights law

Human rights advocates are increasingly arguing that IGOs such as the UN are bound by human rights law.<sup>162</sup> It is first necessary to establish the legal foundations for any claim of the implementation or the promotion of human rights obligations beyond national borders.<sup>163</sup> Reinisch argues that the underlying theoretical issue of accepting that the UN as a subject of international law means the UN is in effect subject to general international law customs and general principles and most importantly is subject to peremptory norms of international law. He purports humanitarian law as codified in the Geneva Conventions largely reflects such

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<sup>159</sup> A. Reinisch, 'The Accountability of International Organizations', *op.cit.*, p.133.

<sup>160</sup> K. Wellens, *op. cit.*, p.114.

<sup>161</sup> F. Megret, F. Hoffmann, *op. cit.*, p.316.

<sup>162</sup> G. Verdirame, *op. cit.*, p.286.

<sup>163</sup> S. Skogly, M. Gibney, 'Transnational human rights obligations', *Human Rights Quarterly*, Vol.24, p.786.

general international law, and could perhaps conceivably enjoy peremptory status.<sup>164</sup> The argument derives as Verdirame explains, from the conferral of international legal personality on the UN, from customary international law from the constitutional effect of the UN Charter and the constituent instruments of the subsidiary programmes and from acts of the political organs of the UN.<sup>165</sup> The Charter states the UN is bound to “promote and encourage respect for human rights”<sup>166</sup>, the terms ‘promotion’ and ‘encouragement’ refers to attempts to advance awareness in respect of the rights and procedures for asserting and protecting human rights.

Increasingly many international law scholars have argued that the UN has a duty to observe general international law. Article 24, para. 2 of the UN Charter requires the Security Council to act “in accordance with the Purposes and Principles of the United Nations,” among which Article 1, para.1 lists the maintenance of peace and security “in conformity with the principles of justice and international law”. Other than these technical interpretations of the UN Charter law, strong arguments in favour of an obligation to observe customary law can be derived from more general reflections concerning the status of the UN as an organisation enjoying legal personality under international law.<sup>167</sup>

However in practice actually trying to hold the UN accountable for violating such principles is a more difficult task. The majority of judicial proceedings have proved fruitless. A fundamental setback is there are no international courts or tribunals available where individual victims can file their claims. Not even UN member states or UN organs have the opportunity to sue the organisation or any of its organs before the International Court of Justice since the ICJ Statute limits contentious proceedings to inter-state disputes.<sup>168</sup> As a result access to the ICJ has remained unavailable for individual plaintiffs. In the past, some of the individual victims harmed in the course of UN military activities during the Congo operation have attempted to sue the UN before national courts, but these cases failed because the UN enjoys immunity from any legal process.<sup>169</sup> In the rare cases where immunity would not impede lawsuits against international organisations before national courts, the latter are likely to employ other legal “abstention” doctrines in order to avoid adjudicating such

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<sup>164</sup> August Reinisch, ‘Governance Without Accountability?’, *op. cit.*, p.281.

<sup>165</sup> Guglielmo, Verdirame, *op. cit.*, p.286.

<sup>166</sup> UN charter, art 1(3), 55, 62(2).

<sup>167</sup> August Reinisch, ‘The Accountability of International Organizations’, *op. cit.*, p.136.

<sup>168</sup> Art 34 Statute of the ICJ.

<sup>169</sup> See *Manderlier v Organisation des Nations Unies et Etat Belge (Ministr des Affaires Etrangeres)*, Tribunal Civil de Bruxelles, 11 May 1966, UN Jur. YB.,

disputes.<sup>170</sup> There is an apparent gap between theories of how international human rights law binds the UN and explanations of how the UN might violate human rights.

If the universality of human rights is to obtain a legal grounding, there needs to be a clear recognition in international law that harm and the responsibility for this harm comes not only at the hand of domestic governments, but in the actions of other bodies as well.<sup>171</sup> Recent attempts to overcome this state-centred proposition can be briefly categorized as either elevating inter-governmental actors to status of subjects of international law. Directly, this would help address human rights obligations, and help stress that human rights have to be respected by non-state actors as well.<sup>172</sup> Megret and Hoffmann's argue that in order to transcend this dichotomy, a cogent middle ground is needed where UN responsibility for violating human rights can be located.<sup>173</sup> The dilemma of finding redress mechanisms in case of unlawful UN actions remains unsolved.<sup>174</sup>

### **3.2 Changing role of the UN: new challenges, new responsibilities**

In this era of globalisation and privatisation there has been a tendency of shifting governance tasks to non-state actors, increased deregulation at both national and international levels, dependence upon the free market, and significantly minimal government have all contributed to a parallel trend of moving governance tasks to inter-or supranational entities like the UN, the World Trade Organisation and the European Union.<sup>175</sup> This in turn has led to an erosion of the sovereignty and rendered the importance of state supremacy in the international sphere *passé*.<sup>176</sup> Despite this it is important that member states (of international organisations) do not hide behind the excuse of the erosion of state sovereignty or the new focus on increased accountability of international organisations, as an excuse to evade their human rights obligations responsibilities.

Dramatic changes within intergovernmental organisations such as, the UN and the UNHCR, functions are gradually forcing us to reconceptualise the role of these actors in relation to human rights. The UN has transformed itself from a traditional IGO into a more supra-

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<sup>170</sup> A. Reinisch, 'The Accountability of International Organizations', *op. cit.*, p.139.

<sup>171</sup> M. Gibney, K. Tomasevski, J. Vedsted-Hansen, *op. cit.*, p.293.

<sup>172</sup> A. Reinisch, 'Governance Without Accountability?' *op. cit.*, p.297.

<sup>173</sup> F. Megret, F. Hoffmann, *op. cit.*, p.316.

<sup>174</sup> A. Reinisch, 'Governance Without Accountability?' *op. cit.*, p.286.

<sup>175</sup> P. Alston, "The Myopia of the Handmaidens: International Lawyers and Globalisation", *European Journal of International Law*, vol. 8, n0 3, art 4.

<sup>176</sup> A.L.Paulus "Law and politics in the age of globalization", *European Journal of International Law*, vol. 11, n0 2.

governmental entity.<sup>177</sup> The United Nations human rights missions have increasingly involved in direct tasks of governance. Many scholars have increasingly argued with this increased level of governance should come an increased level of responsibility akin to that generally associated with states.<sup>178</sup> However this argument is not as new as it seems, Wilfred Jenks had already made this point more than half a century ago when he argued, while discussing trusteeship agreements, that ‘it should be possible for the UN...to be a respondent in such a case in its capacity as administering authority’.<sup>179</sup> In all circumstances in which an international organisation like the UN or UNHCR exercises some kind of governmental authority and takes on increasingly sovereign functions over a particular territory on a temporary basis there is clearly a direct personal jurisdiction.

### 3.2.1 International Territorial Administrations

When the UN was conceptualised it was to be an institution that worked for, with and via states. UN activities were assumed to operate in the limited context of interstate cooperation, and UN agencies were to provide certain political, financial and technical services to governments. However, today the UN agencies increasingly find themselves involved directly with populations and effectively exercising de facto control even in some cases functioning as a quasi-government.

The emergence of the concept of “failed” or collapsed states, combined with a recent ‘unwillingness to abandon such places to their own fate, prompted the UN to step in situations of a complete vacuum of power.’<sup>180</sup> In these incidents the UN is effectively acting as a sovereign power or as “both state and state builder”.<sup>181</sup> An example of this can be found in Kosovo where after a brief humanitarian intervention, UNMIK developed into a complex governance structures containing a host of ministry departments associated with governmental administration and even sporting an official gazette. UNMIK was involved in a whole range of services from reconciliation processes; attempts to organise both national and local democracy; economic, justice, law education, pension, health, and land reform; the launching of a policy of environment protection; legislation over matters of public mores and the

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<sup>177</sup>F. Megret, F. Hoffmann, *op. cit.*, p.315.

<sup>178</sup>Such as; F. Megret, F. Hoffmann, R. Wilde, ‘Accountability and international actors in Bosnia and Herzegovina, Kosovo and East Timor’, *ILSA Journal of International and Comparative Law*, Spring 2001

<sup>179</sup>C.W.Jenks, ‘The Status of International Organisations in Relation to the International Court of Justice’, *Transactions Grotius Society* 32 (1946), 1-41, at 28, para.40 as cited in Karel Wellens, *Remedies against International Organisations*, *op. cit.*, p.20.

<sup>180</sup>Wolfgang Biermann, *The Evolution of UN peacekeeping Operations in the Post-Cold war era (1995)* as cited in F. Megret, F. Hoffmann, *op. cit.*, p.328.

<sup>181</sup>J. Cotton, *Against the Grain: the East Timor Intervention*, 43 *Survival* 127,139 as cited in F. Megret, F. Hoffmann, *Ibidem*.

drafting of a constitutional framework.<sup>182</sup> Consequently the argument follows that when the UN assumes powers akin to those of sovereign states, the UN is no longer a ‘benign promoter of human rights’ but rather in areas like Kosovo it becomes a guarantor of rights.<sup>183</sup>

### 3.2.2 Refugee camps

Humanitarian agencies have only relatively recently begun to incorporate the language of human rights into considerations of their work. In 1997 a group of humanitarian agencies launched the Sphere Project. The Project has developed a Humanitarian Charter and a set of universal minimum standards to “increase the effectiveness of humanitarian assistance, and to make humanitarian agencies more accountable.” The Sphere Project focuses on accountability in the delivery of adequate humanitarian assistance, but it also advocates “governments and other parties meet their obligations under international human rights law, and international humanitarian law and refugee law”.<sup>184</sup> Although the Charter states that NGOs are to be held accountable the question of to whom humanitarian organisations would account is still being considered under a “Humanitarian Ombudsman” project. The project was initiated by British NGOs and is beginning to stress a more comprehensive rights based approach.<sup>185</sup> Its aim is to allow refugees and other beneficiaries to file complaints and therefore increase accountability towards them.

Host states normally have ratified international instruments thus acknowledging that they owe rights and duties towards the refugees, such as developing a procedure for protecting them. This legal framework and rights begins to take effect when the host state grants the refugee asylum status. However due to the volatile political situations with so many countries plagued with civil wars the majority of refugee camps are in poor countries lacking the means to administer the camps themselves. Wilde identifies that the international protection of refugees is in crisis because the applicable legal regime no longer meets the interests of those to whom it applies and it appears the political will for reform is lacking.<sup>186</sup> Instead host countries often prefer not to grant refugees status, thus allowing refugees to stay within the territory and consequently evade any legal responsibility towards them. Increasingly UNHCR has adopted its own determination process in order to establish who merits its assistance, and

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<sup>182</sup> UNMIK

<http://www.UN.org/peace/kosovo/pages/kosovo1.htm>

<sup>183</sup>F. Megret, F. Hoffmann, *op. cit.*, p.333

<sup>184</sup>Humanitarian Charter and minimum standards in disaster responses 1, Isobel McConnan ed., 2000

<sup>185</sup>B. Harrell-Bond, ‘Can Humanitarian Work with Refugees be Humane?’ Human Rights Quarterly, Vol. 24, 2002, p.75.

it runs its camps according to its own guidelines. Therefore the refugee is given temporary refuge or protection determined and implemented by UNHCR, rather than the host state. Although the presence of the refugees gives rise to rights and duties vis a vis UNHCR, rather than the host state in international law, the situation on the ground is being governed in reality largely outside the conventional application of this legal framework. Thus, UNHCR is not monitoring the host state's treatment of refugees, but adopting the host state's responsibility over them for itself. In such circumstances, one must examine the status of UNHCR in international law, to see whether or not an actor so powerfully involved in the fate of individuals is immune from the very framework with which it is in the business of asking states to comply. A system of accountability to combat abuses of power, as witnessed in West Africa by humanitarian organisations towards refugees is vital in these circumstances.

Wilde's study develops an argument that because UNHCR are in *de facto* control of the camps they should also have the corresponding obligations. Thus this would make the UNHCR responsible for the activities that occur inside a refugee camp.<sup>187</sup> This model would assume that in those areas where the UNHCR has taken on the state's obligations in international human rights law, there is a prima facie liability concurrent with that of the state. However the UN are keen to stress as that the

“primary responsibility of states hosting refugees is to ensure the security and civilian and humanitarian character of refugee camps.”<sup>188</sup>

Ralph Wildes argues

“The adoption of a human rights framework would require a leap of faith on the part of UNHCR. The organization would have to think in legal terms like a state responsible for human rights. Instead of viewing itself as the provider of certain basic services in the camps, it would confront the reality of governing a political unit, and therefore adopt a coherent and co-ordinated holistic strategy to run through all aspects of camp life.”<sup>189</sup>

Such an operation requires a comprehensive revision of the operation of international refugee law; in order for it have a more effective impact on the rights and duties of refugees, states and organisations.

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<sup>186</sup> Ibidem., p. 109.

<sup>187</sup> Ralph Wilde, ‘Quis Custodiet Ipsos Custodes? Why and How UNHCR Governance of “Development” Refugee Camps Should be Subject to International Human Rights Law, *1 Yale Human Rights Development Law Journal*. 5 (1998).

<sup>188</sup> SC Res. 1208, UN SCOR, 394<sup>TH</sup> MTG., UN Doc. S/res/1208 (1998).

### 3.3 Problems with international administrations<sup>190</sup>

*Sed quis custodiet ipsos custodes?*<sup>191</sup>

When power becomes absolute concern about abuses should be paramount. Yet, it is usually naively assumed that ‘UN power’ is ‘good’ power, as opposed to state power, which everyone regards with a critical eye.<sup>192</sup> As Verdirame notes

“The existence of at least a risk of UN administrations acting in breach of human rights is not recognised, and no provision is made for remedies to individuals against administrative, judicial or legislative acts of UN authorities in breach of human rights.”<sup>193</sup>

As Foucault put it,

“the real political task in a society such as ours is to criticize the working of institutions which appear to be both neutral and independent; to criticize them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them.”<sup>194</sup>

The purpose of such ‘unmasking’ is to combat those that are involved in sexual exploitation and trafficking of women. The questions which need to be addressed are, who is best placed to take the necessary remedial action in the interests of refugees and what are the strategies that might be most effective?

In the past, since the UN was never in any given territory and at any one time the sole actor responsible for population it could always attribute blame for a human right violation onto the state it was acting in. However today the situation has become far more complex, when international organisations, like the UN assume new and greater operational responsibilities, with this comes the distinct functional capacity to violate fundamental rights. Previously

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<sup>189</sup> Ralph Wilde, ‘Quis Custodiet Ipsos Custodes? Why and How UNHCR Governance of “Development” Refugee Camps Should be Subject to International Human Rights Law, 1 Yale Human Rights Development L.J. 5 (1998).

<sup>190</sup> For the purpose of this section I refer to both international territorial administrations like UNMIK and UNHCR refugee camps as international administrations..

<sup>191</sup> “Who is to keep guard over the guards themselves,” Juvenal, *The Sixteen Satires* as cited by R.Wilde, *Quis Custodiet Ipsos Custodes? Why and How UNHCR Governance of “Development” Refugee Camps Should be Subject to International Human Rights Law*, *op. cit.*, p.107.

<sup>192</sup> Guglielmo, Verdirame, *op. cit.*, p.280.

<sup>193</sup> *Ibidem*. p.281.

<sup>194</sup> Foucault, in *Human Nature*, at 171 as cited in Barbara Harrell-Bond, *op. cit.*, p.53.

power was concentrated almost exclusively in the states, such concentration of power being one of the characteristics of the post-Westphalia world thus it was fitting for the human rights discourse to concern itself solely with imposing obligations on states, and with creating a system of checks and balances on them.<sup>195</sup>

Wilde has compared the similarities of international actors engaging in administrative activity and the activity performed by states in their own territory.<sup>196</sup> However he highlights that despite carrying out similar roles they are subject to very different regulatory regimes. At present international law operates under the assumption that international organisations and states perform different activities. States are conceived to administer territory, and international organisations do not. As a result states are regulated and international organisations are not. Moreover international organisations are given a regulatory role through monitoring human rights. This assumption that states administer territory and international actors do not is mirrored in the way international law shapes the application of national law to these actors. As already stated the law grants international actors immunity from national law, yet it remains silent with respect to local state governments. This immunity reflects an idea that international organisations do not perform administrative activities, but rather, perform activities that are focused on monitoring and scrutinizing territorial administration by states.<sup>197</sup> A problem with the exercise of administrative powers by the UN in a *de facto* manner is it lacks a formal act transferring governmental functions to the UN, allowing the UN to effectively operate in a legal vacuum. Hence the territory operates without even the minimal guarantees against abuses of power that the constituent instrument, treaty or Security Council resolution, or both offer in the case of *de jure* administrations.<sup>198</sup>

The notion of international administrations have encountered a great deal of criticism, for example, David Chandler, argues the international community in Bosnia did not phase itself out and failed to transfer its responsibilities progressively to national and local authorities. He purports the Dayton Peace Agreement, and UNMBIH, were premised, he maintains, on the ‘assumption that democracy can be taught or imposed by international bodies on the basis that some cultures are not rational or civil enough to govern themselves’. He believes the

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<sup>195</sup> Guglielmo, Verdirame, *op. cit.*, p.267.

<sup>196</sup> Ralph Wilde, ‘Accountability and international actors in Bosnia and Herzegovina, Kosovo and East Timor’, *ILSA Journal of International and Comparative Law*, Spring 2001, p.457.

<sup>197</sup> Ralph Wilde, ‘Accountability and international actors in Bosnia and Herzegovina, Kosovo and East Timor’, *ILSA Journal of International and Comparative Law*, Spring 2001, p.458.

<sup>198</sup><sup>198</sup> Ralph Wilde, ‘Accountability and international actors in Bosnia and Herzegovina, Kosovo and East Timor’, *op. cit.*, p.458.



democratisation polices included ‘a regulatory and dis-empowering content’ hidden behind the language of ‘rights protection, multi-ethnic governance, open media and civil society building.’<sup>199</sup>

Wilde recognises that territorial administration by international actors seeks to foster human rights and democracy yet paradoxically they operate in an autocratic manner themselves.<sup>200</sup> As Sergio Vierra de Mello, the then head of the UN administration in East Timor, refers to this as “benevolent despotism,” and a outcome of this is clearly a lack of accountability.<sup>201</sup> Hence territorial administration by international actors, risk undermining their own objectives by establishing a precedent for governance that is unaccountable, centralised and autocratic.<sup>202</sup>

The increasingly supranational activities of the UN need to be supplemented by methods of political and legal control, otherwise the current dominance of the organisation by Western states is likely to appear more and more like a dictatorship of the many by the few, thereby undermining the organisation’s legitimacy.<sup>203</sup> Without these reforms the UN will rightly be accused of double standards – of promoting democracy, justice and accountability within countries but not within its own institution.

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<sup>199</sup> Chandler, *Bosnia: Faking Democracy After Dayton* (London: Pluto Press, 1999) as cited in G. Verdirame *op. cit.*, p.283.

<sup>200</sup> R. Wilde, ‘Accountability and international actors in Bosnia and Herzegovina, Kosovo and East Timor’, *op. cit.*, p.458.

<sup>201</sup> Sergio Vierra de Mello, ‘How Not to Run a Country: Lessons From Kosovo and East Timor (2000) as cited by R. Wilde Ibidem.

<sup>202</sup> R. Wilde, ‘Accountability and international actors in Bosnia and Herzegovina, Kosovo and East Timor’, *op. cit.*, p.457.

<sup>203</sup> N.D.White, ‘Accountability and Democracy Within the United Nations. A Legal Perspective’, *International Relations* Vol XII, Number 6, Dec 1997 p.18.

## Chapter 4 -Preventive measures adopted by the UN and UNHCR

As in any failing that is subsumed within the structure and context of its host, if not seen to be dealt with then criticism levied at the UN may become even harder to rebut if not seen to be tackled. As a result of the incidents described in the case study and perhaps in an effort to appease the negative media attention the UN and the UNHCR began implementing preventive action projects to try to combat this bad practice. This section will serve to outline preventive measures and initiatives that the international community have undertaken to combat the two central issues this paper has sought to address, namely peacekeepers involvement in trafficking related activity and the sexual exploitation of the refugee population.

### 4.1 Initiatives to combat peacekeepers involvement with trafficking

A conference was held on May 9<sup>th</sup> and 10<sup>th</sup> of 2002 in Turin, hosted by the UN Interregional Crime and Justice Research Institute (UNICRI) and Transnational Crime and Corruption Centre (TraCCC) where a focus group of international experts gathered to address how to leverage training regimens to combat the trafficking in persons, especially women, in the context of PKOs.<sup>204</sup> The situation in the Balkans was used as a point of reference. The conference group reinforced the importance of providing training for members of institutions at all levels of the local and internal communities to raise awareness and improve the recognition of and response to trafficking in persons.<sup>205</sup>

The participants of the conference agreed on two broad guidelines. The first stemmed from the fact that as PKOs are frequently the *de facto* authority and in control of PKO areas, the international community in general and PKOs more specifically had to take responsibility for combating trafficking in persons. Secondly, regardless of what specific policies and programs the differing participants of the meeting proposed, the only way to ensure that PKOs could make progress against trafficking in persons was as part of a more holistic approach.<sup>206</sup>

The first topic was the need to construct better mandates and adjust existing ones. The experts agreed that criminal justice issues received only marginal attention in the construction of PKO mandates, with trafficking in persons getting little to no consideration. The experts agreed that anti-trafficking has to become an integral part of the PKOs' mission and the larger plan of post-conflict reconstruction, and thus the insertion of anti-trafficking language into PKO mandates. It was also deemed necessary for internal policies and codes of conduct to be

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<sup>204</sup>Turin conference report, *op. cit.*

<sup>205</sup> Trafficking in Persons and Peacekeeping Operations- A Comprehensive Awareness and Training Program, Appendix 1 of Turin conference report, *Ibidem.*

strongly backed by public statements from the PKO leadership that the involvement of PKO personnel in trafficking in persons will not be tolerated and will be met with swift punishment upon discovery.<sup>207</sup>

One outcome of the conference was the development of a comprehensive and effective awareness and training program.<sup>208</sup> The proposed program was designed to provide training and information for all members of PKOs around the globe. However before implementing the programme globally a pilot program was to be initially launched in Southeast Europe.<sup>209</sup> This test platform is a means to the larger end of a fully-implemented program training all members of current, and more importantly future, PKOs.<sup>210</sup> The program appears to have made some headway in addressing the core issues involved in preventing trafficking. It outlines a series of four parallel activities all sharing one common goal - a transparent and effective anti-trafficking framework for all members of peacekeeping operations and corresponding local institutions around the globe in order to firstly, raise visibility/awareness of the issue within peacekeeping regions and the creation or strengthening of anti-trafficking capacities.<sup>211</sup> I will summarise briefly the main four elements of the training program.

#### **4.1.1 Compiling, analysing and disseminating trafficking curricula**

This activity supports anti-trafficking through researching any existing anti-trafficking training materials<sup>212</sup> and any experts and organisations working in the region. The aim of this is to increase the flow and synergy of accurate information available concerning the proclivity and seriousness of trafficking in persons. Providing information about trafficking in persons and especially its impact on the victims can help improve understanding. Once this is found these training materials will then be catalogued in a library, on an internet site or stored on a CD-Rom.

#### **4.1.2 Constructing and implementing a training regimen for PKOs.**

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<sup>206</sup> Ibidem., p.23.

<sup>207</sup> Ibidem., p.24.

<sup>208</sup> Trafficking in Persons and Peacekeeping Operations- A Comprehensive Awareness and Training Program, Appendix 1 of Turin conference report, Ibidem.

<sup>209</sup> Ibidem. p.2.

<sup>210</sup> Ibidem.

<sup>211</sup> Ibidem., p.1.

<sup>212</sup> For example from The Transnational Crime and Corruption Center (TraCCC), International Criminal Police Organization (Interpol), the Organization for Security and Co-operation in Europe (OSCE), US State Department., etc.

This translates to improving or updating existing curricula to maximise their effect or to develop new training regimens where none exist. The second part of this program will: Improve and disseminate effective training regimens to target audiences; Identify and support local institutions developing training curricula in PKO regions; Construct new training instruments for specific audiences addressing gaps revealed from the analysis of existing training instruments; Providing instructional design and educational technology to support and enhance training effectiveness and retention.<sup>213</sup> In regards to the implementation, it was agreed that a combination of both classroom style and manual-based trainings were suitable.<sup>214</sup> It was suggested that a chapter specifically explaining the responsibilities that PKO personnel have in countering trafficking should be included in the existing PKO manual. It was also recognised that PKOs need to be trained in some areas of human rights in order to adequately provide protection and assistance to victims, particularly where national authorities are unable or unwilling to do so.<sup>215</sup> It was also suggested that victims of trafficking should also be involved with the design and implementation of training programmes, as victims have a wealth of knowledge to share.

A case and specialist based training program would serve to illustrate the detrimental effect trafficking has on victims. TraCCC and the Academic Consortium for Global Education (ACGE) intend to work with UN headquarters staff to implement trafficking in persons training into its existing training seminars. Secondly UNICRI and TraCCC will assemble a briefing team of approximately six members drawn from law enforcement, prosecution/legal scholars, NGOs, military/PKOs, and others to implement training of international and local members of the audience discussed above in the PKO region. The training sessions will aim to rotate three classes of fifty to a hundred students through a four day training seminars.<sup>216</sup>

#### **4.1.3 Constructing awareness and political will**

These preventive measures produced by the participants of the conference appear to support the need to raise awareness and guide policy, among the agencies that comprise the PKO's structure – military, law enforcement, civilian, political, towards the eradication of trafficking in persons. The overall goal to eradicate trafficking requires regional cooperation around anti-trafficking programs. Such cooperation would facilitate the cultivation of political will

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<sup>213</sup> Trafficking in Persons and Peacekeeping Operations- A Comprehensive Awareness and Training Program, Appendix 1 of Turin conference report, p.4.

<sup>214</sup> Turin conference report, *op. cit.*, p.30.

<sup>215</sup> Ibidem, p.34.

<sup>216</sup> Ibidem.

supporting anti-trafficking efforts.<sup>217</sup> The participants of the conference discussed improving coordination among institutions at all levels of the PKOs and in the international community.<sup>218</sup> The proposal plans to bring together supervisory officials to PKOs, major IGOs and NGOs providing services to PKO. Intensive informational training is intended for all of the above groups to show how trafficking in persons operates within PKOs, and how the comprehensive training program will move to address gaps between the two. This will serve to hopefully enhance political will among key actors to address the issue of trafficking in persons in PKOs.

#### **4.1.4 Focus group meetings**

A second meeting of the international experts that gathered in Turin in May last year is due and it will focus on training for increased compliance with codes of conduct, especially of the civilian side of PKOs and outline plans for the formation of interagency task forces between international agencies, local institutions, and the NGO community in order to create a foundation upon which to begin implementation of training materials

#### **4.2 Bringing a gender perspective into PKO's**

The UN has recently moved gender issues to the peacekeeping agenda. In the year 2000 the department of peacekeeping operations (DPKO) stated that

“Women’s presence [in peacekeeping missions] improves access and support for local women: makes male peacekeepers more reflective and responsible: and it broadens the repertoire of skills and styles available from within the mission, often with the effect of reducing conflict and confrontation.”<sup>219</sup>

The concept of gender mainstreaming has been defined by the UN as

“...a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres.”<sup>220</sup>

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<sup>217</sup> Ibidem., p.24.

<sup>218</sup> Ibidem., p.26.

<sup>219</sup> “Mainstreaming as Gender Perspective in Multidimensional Peace Operations”, Lessons Learned Unit, DPKO, July 2000 p.iii.

<sup>220</sup> Elisabeth Rehn & Ellen Johnson Sirleaf, *op. cit.*, p.65.

Since the year 2000, four of the 15 peace operations, have employed staff to specifically work on gender issues and have included training a specific gender based programme for peacekeeping personnel. The course involved UN agencies, humanitarian organisations, and local women's groups in the host country.<sup>221</sup> This training can also promote gender mainstreaming within an operation, irrespective of the number and level of women an operation may employ.<sup>222</sup> Generally gender advisers and units are expected to ensure that gender concerns are integrated into all of the mission's programmes and activities; raise gender awareness among international staff at all levels of authority; conduct gender training for peacekeepers, military observers and civilian police.<sup>223</sup> For example UNAMSIL deployed a gender specialist in 1999 and established a Coordination Committee for the Prevention of Sexual Exploitation and Abuse.<sup>224</sup> This Committee included representatives of UN agencies, NGOs and the government who investigated allegations of sexual abuse.<sup>225</sup> UNAMSIL now requires all newly arrived peacekeepers to participate in a sensitisation programme which focuses on appropriate sexual conduct.

#### **4.3 Preventive measures adopted by the UNHCR**

After receiving the report by consultants commissioned by UNHCR and Save the Children, the UNHCR responded instantly by implementing a series of specific preventative remedial actions. These preventive actions were aimed at better protecting refugee women as well as effectively addressing the problem of sexual exploitation and abuse of refugee children. The UNHCR developed both global and individual country action plans.<sup>226</sup>

A regional workshop for UNHCR staff entitled "Ensuring Effective Protection: Preventing and Responding to Sexual and Gender-Based Violence" was held in Abidjan, Côte d'Ivoire, from April, 2002. The participants included protection, community services and programme staff working for UNHCR in Côte d'Ivoire, Guinea, Liberia and Sierra Leone. The overall goal of the workshop was to improve the ability of the offices in the region to implement

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<sup>221</sup>Ibidem., p.69.

<sup>222</sup>Ibidem., p.69.

<sup>222</sup>Ibidem.

<sup>223</sup> Ibidem

<sup>224</sup>Ibidem. p.73.

<sup>225</sup>Ibidem. p.73.

<sup>226</sup>UNHCR remedial actions and preventive measures against sexual exploitation and abuse of refugees, UNHCR Press Release, 22 Oct 2002  
<http://www.UNHCR.ch>

UNHCR's protection responsibility and to prevent and respond to sexual and gender-based violence, including sexual exploitation.<sup>227</sup> A further two UNHCR regional workshops focussing on "Addressing Sexual and Gender Based Violence in Refugee Settings" were held in September 2002.<sup>228</sup> The workshops promoted common understanding key ideas and issues regarding gender, women and children's rights and sexual and gender based violence, including sexual exploitation.

Global methods taken by UNHCR to combat sexual exploitation have concentrated on awareness raising and training programmes for refugees as well as training of UNHCR staff. Awareness raising campaigns include the distribution of pamphlets, posters and questionnaires to refugees' in order to inform refugees of their rights and responsibilities and what they reasonably can expect in terms of assistance. African videotapes from Nigeria and Ghana featuring messages on the rights of children are being screened in camps, while rap groups have performed concerts with an anti-violence theme. UNHCR also now provide information to them on how to report anyone who attempts to exploit them in exchange for such aid.<sup>229</sup> Several new skills-training projects for women were started in some countries, such as Guinea, including tie-dying, embroidery, soap making and adult literacy. The programmes are designed to give women more employment opportunities.<sup>230</sup>

Many field offices have already organised appropriate and often customised training sessions for their staff. Training sessions have been held with guards, receptionists, and local police working at UNHCR's offices who come into contact with asylum-seekers, instructing them on appropriate behaviour and UNHCR policies. For example, by the end of October 2002, all Sierra Leone staff from senior managers to drivers were given basic training in gender-based violence and an introduction to the new UNHCR Code of Conduct and Standards of Accountability.<sup>231</sup> Some camps, such as Guinea and Liberia have undertaken a study of their assistance distribution systems as well, with the aim of increasing the number and involvement of female employees working in the distribution of aid.<sup>232</sup> Appropriate

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<sup>227</sup> Ibidem.

<sup>228</sup> Ibidem.

<sup>229</sup> Ibidem.

<sup>230</sup> UNHCR remedial actions and preventive measures against sexual exploitation and abuse of refugees, UNHCR Press Release, 22 Oct 2002

<http://www.UNHCR.ch>.

<sup>231</sup> Ibidem.

<sup>232</sup> Ibidem.

assistance standards will significantly reduce the vulnerability of refugee women and children.<sup>233</sup>

Other global measures adopted by UNHCR include the issuing of a checklist that emphasises prevention of age based, sexual and gender-based violence as one of the most important measures to be taken by the authorities in ensuring the well being of refugees in emergencies and camps.<sup>234</sup> All regional bureaus have designated focal points that are actively monitoring the actions reported by the field officers. In as far as it is possible female staff have been designated as focal points for receiving asylum seekers. Counselling services to refugees and asylum seekers have been increased. Some officers have set up complaint mechanisms and have improved the access by refugees to international staff members. UNHCR's monitoring mechanisms were reviewed and, in general, more frequent camp visits have been conducted. Offices are also prioritising the identification, registration and re-unification of separated children or to provide fostering arrangements.

A senior staff member in UNHCR headquarters, reporting directly to the Assistant High Commissioner, was appointed to co-ordinate consistent and resource effective follow-up of all evaluation recommendations, including those relating to the evaluations on: UNHCR Policy on Refugee Women and Guidelines on their Protection; Meeting the Rights and Protection Needs of Refugee Children; and UNHCR'S Community Services Function.

#### **4.3 Concluding remarks**

The training proposal relating to trafficking from the Turin conference distinct to others as it attempts to address the issues by combining the sometimes conflicting goals of the need to react quickly to a problem and the need to construct ensuring sustainability. If this proposal proves successful, it could be implemented in not only South East Europe, but rather create a model of information, training, and professional development for the rapid construction and deployment of anti-trafficking awareness and capabilities for other current and future peacekeeping operations. The adoption of a gender perspective on the peacekeeping agenda may serve to identify incidents of sexual exploitation by PKOs as female staff may be able to

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<sup>233</sup> 'Special Representative of the Secretary-General launches UNAMSIL Personnel Conduct Committee', 26 August 2002, Relifweb.

<sup>234</sup> UNHCR remedial actions and preventive measures against sexual exploitation and abuse of refugees, UNHCR Press Release, 22 Oct 2002, <http://www.UNHCR.ch>.



reach out and empower victims of sexual exploitation and trafficking to come forward, without fear. These training programmes and initiatives undertaken by the UNHCR are to be welcomed and show that the UNHCR are slowly beginning to face up to the extent of the problem. Strategies, procedures and resources need to be strengthened and adequately funded if they are to prove successful. They are important steps, but in themselves not enough and a substitute for a full-fledged disciplinary mechanism.

## Chapter 5 - Recommendations

This section details a personal submission of initiatives following recommendations already inspired by propositions by NGOs, such as Human Rights Watch, the UN and the UNHCR as well as other IGOs.

### 5.1 General recommendations

It is essential to foster regional cooperation and coordination between IGOs, NGOs, other international organisations and national governments, particularly those member states involved in PKO's. Such cooperation would facilitate the cultivation of political will supporting anti-trafficking efforts and other initiatives to end sexual exploitation in general. All groups and actors should work towards a common goal, by internally nominating a coordinator within each group, and the coordinators should regularly meet to discuss their progress with the other groups. Different groups in an area should try to establish burden sharing and how to best make use of their resources. For example in regards to trafficking NGOs could be assigned the task of sheltering victims and raising public awareness whereas the task of creating training programs could go to an IGO. This would prevent any overlap or inconsistencies and remove the potential of different groups to have competing goals. The Bosnia case study demonstrates that the coordination between local law enforcement agencies and prosecutors and the international police often needs to be strengthened as for example they often failed to share information resulting into the failure to prosecute traffickers.

There is also a need to foster local capacities, for example NGO's services should not be overlooked, they can serve as a valuable source of information. The international community should support the research programs of local NGOs and assist in the broader publication of this information. By doing this the international community can help increase public awareness of the issue and empower the local voices seeking to counter trafficking.<sup>235</sup> The media can also be a highly influential tool when raising awareness. Responsible investigative journalism can serve to highlight these trafficking operations and cases of sexual exploitation as well as raise public awareness on the subject. The media can reach a mass target audience, particularly the international news outlets, often provoking a rapid response by the international community. Political will also needs to be cultivated as although governments around the globe are beginning to recognise the problem of trafficking related misconduct and sexual exploitation, the competition from other serious issues frequently forces trafficking and sexual exploitation down on the list of priorities. Therefore, it is essential that steps be taken

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<sup>235</sup> Turin conference report, op.cit., p.25.

to ensure that governments and PKO fully understand the gravity of the situation and the ways that incidents of trafficking and sexual exploitation are impacting their territories and their missions. Recognition of the entirety of the problem is required before any remedial action can be taken, and in order for governments and the international community to bolster the will to combat the situation.

## **5.2 Improving the legal mechanisms to prosecute peacekeepers**

A prerequisite for an effective accountability regime of any organisation is the viability of a clear and well-defined set of rules.<sup>236</sup> Consequently, enforceable codes of conduct for international peacekeeping personnel need to be improved and strengthened to make them consistent with international humanitarian and human rights law. It is necessary to integrate the combating of trafficking in persons fully into the mandate of the PKO. This recommendation is essential as the possibility of remedial mechanisms depends in the first place on the existence of a coherent code of conduct or body of rules outlawing sex related crimes. At present peacekeeping mandates are often drawn up by those with little knowledge of the local context so they cannot fully appreciate the ability to implement such instructions in the local community. It would be more appropriate if people with knowledge of the situation on the ground draft mandates, this will aid in combating organised crime and trafficking.<sup>237</sup>

Codes of conduct should be strongly backed by public statements from the PKO leadership that the involvement of PKO personnel in trafficking in persons will not be tolerated and will be met with swift punishment upon discovery. As OIOS recommended the DPKO should examine the gaps that exist in the procedures for reporting sex-related offences after peacekeepers are accused of these acts.<sup>238</sup> Therefore it is necessary to investigate fully any allegations of sexual violence by peacekeeping personnel, which will serve to enforce the policy of zero tolerance for any such acts perpetrated by anyone employed or affiliated with the UN. In order to increase the transparency of UN investigations into these incidents the UN should publicly disclose the results of internal investigations into trafficking-related allegations, though at the same time ensuring the confidentiality of the victim. Incidents of misconduct should be properly recorded in personnel files so that perpetrators are not rehired in any other UN mission. There should also be better screening of personnel assigned to

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<sup>236</sup> K. Wellens, *op. cit.*, p.178.

<sup>237</sup> Turin conference report, *op. cit.*

<sup>238</sup> Report of the Secretary -General on the activities of the Internal Oversight services... A/57/46, *op. cit.*, p.19, recommendation 16.

PKOs, where programs should ensure that the personnel do not have prior or current connections to sexual violence, trafficking or other forms of organised crime or corruption. Member states should improve oversight of their contractors and subcontractors providing services to PKOs. The UN should have the ability to require contractors to adhere to an anti-trafficking policy as a condition of contract. In the Turin conference it was suggested the International labour organisation (ILO) model could be used as a model, as it has its contractors sign an agreement prohibiting them from using child labour.<sup>239</sup>

In order to strengthen and enforce the code of conduct and to increase the protection of women and girls in peacekeeping environments, the parties and agencies necessary for the proper investigation of sexual offences perpetrated by peacekeepers need to be clearly identified. Such agencies are the Office of Inspector General and the Office of the Provost Marshal, however currently such offices only exist in very few PKOs, therefore it is recommended that every PKO unit establish such a position. He/she should be notified of all such incidents to ensure that thorough investigations can be conducted and to track the cases for evidence of patterns of behaviour. Perhaps UNAMSIL, where this has already been implemented, could serve as a model to other operations. The second proposed agency stems from the Secretary General's recommendation to establish an Ombudsperson in every peace operation who would handle reports of abuse by peacekeeping personnel. The Ombudsperson should work together with the Provost Marshal and the Inspector General. An ombudsperson would be implemented to handle complaints of the victims and consequently improve the accountability of the UN and the UNHCR. The essential conditions for its effective operation, and thus remedial impact, are independence, an impartial stance and broad powers of investigation.<sup>240</sup> This model could prove advantageous as it offers informality and accessibility, which is essential for victims due to the sensitive nature of their complaints. Also it offers prompt responses as opposed to the current lengthy procedure in the transnational jurisdiction model. Conversely, the ombudsman normally lacks the power to make binding decisions, but uses persuasion to obtain changes in the conduct of the UN through the implementation of recommendations issued by the office. A third proposal could be the establishment of a community relations office composed of national staff should act in cooperation with both the host community to facilitate the complaints process as well as the Provost Marshal and the Inspector General.<sup>241</sup> A fourth proposal relates to the creation of an office set up specifically for this purpose, she or he could carry out investigations and impose

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<sup>239</sup>Turin conference report, *op. cit.*, p.28.

<sup>240</sup> K. Wellens, *op. cit.*, , p.178.

disciplinary measures in cooperation with the Special Representative to the Secretary General (SMSG), the Force Commander and the Office of Internal Oversight Services. The fifth proposal was suggested at the Turin conference,<sup>242</sup> is recruiting experienced officers from internal affairs units in member states and deploying them as an office that was independent of the policing mission. The sixth idea was the establishment of a permanent OIOS office at every PKO, one such office already exists in UNMIK. However it has been pointed out that this idea is not viable because the OIOS is charged with overseeing all forms of misconduct throughout the UN and thus is not likely to be able to provide the types of specific support that an Office of Inspector General or internal affair unit assigned to a PKO would be able to offer.<sup>243</sup> Finally NGOs could serve as a monitoring mechanism and a sort of watchdog to ensure that UN bodies are adequately enforcing their codes of conduct.

The Secretary General should use his power to waive immunity where cases warrant, such as engaging in trafficking in persons and crimes of rape. This would aid the fight to combat impunity that presently exists within the UN structure. In regards to improving the affectivity of transnational jurisdiction the home states of the peacekeepers should prosecute personnel implicated in trafficking of persons or sexual exploitation of any kind, immediately on their return to their countries. In appropriate cases, where immunity is waived, as in the recent case involving the Austrian UN police officer, member states should extradite personnel to the country where the incident took place to stand trial. Member states should also encourage the UN to waive immunity for their nationals in appropriate cases. In order to strengthen the transnational jurisdiction model a suitable mechanism to ensure the follow up on cases where peacekeepers have been repatriated should be established. One such mechanisms could be the establishment of a new UN inter-governmental unit specifically designed to enforce codes of conducts in the missions. This unit would focus on relaying information concerning peacekeepers misconduct back to the home state. It would ensure the records of all investigations are delivered to the country of origin of each peacekeeper under investigation. It would also be responsible for ensuring that all prosecutors and police in the countries of origin, receive all records necessary to bring charges against peacekeepers and contractors found to have engaged in illegal activities related to trafficking in persons or cases of sexual exploitation.

My final recommendation rests in improving the accountability of peacekeepers themselves who have been sheltered by their home states. In incidences where transnational jurisdiction

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<sup>241</sup> Elisabeth Rehn & Ellen Johnson Sirleaf, *op. cit.*, p.73.

<sup>242</sup> Turin conference report, *op. cit.*, p.29.

collapses because the home state of a peacekeeper or UNHCR employee fails to prosecute or investigate cases of rape or trafficking (forced servitude) universal jurisdiction should be used. Under this doctrine, as shown in chapter two, other states in the international community are under an obligation to provide justice. The Pinochet precedent has stated that there is to be no impunity for torturers, wherever they are to be found.<sup>244</sup> Therefore as trafficking victims are frequently subject to torture (as well as rape) and as already stated the 1984 Torture Convention is incompatible with any immunities, universal jurisdiction could be applied to prosecute Peacekeeping personnel in an unrelated state.

### **5.3 Remedies against inter-governmental organisations**

It is recommended that a system of impartial and independent accountability mechanisms which hold IGO work up to scrutiny and account, and to which individuals have access to enforce their human rights claims vis-à-vis the operations of the UN and the UNHCR should be set up.<sup>245</sup> This recommendation has its roots from the recent trend where traditional IGO's like the UN and the UNHCR have increasingly been transforming themselves to ones increasingly entrusted with tasks of global governance. Consequently, I agree with Wilde's proposal, outlined in chapter three that with these new powers should come new responsibilities. So in cases where the host state fails to prosecute a peacekeeper for sexual exploitation or a trafficking related crime, the UN should have a duty to take responsibility and enforce justice. In the same way Wilde's study develops an argument that because UNHCR is in *de facto* control of the refugee camps they should also have the corresponding obligations that usually pertain only to the sovereign state.<sup>246</sup> Thus this would make the UNHCR responsible to provide justice in the cases of rape and sexual exploitation that have taken place in the camps.

### **5.4 Combating sexual exploitation and trafficking related misconduct by peacekeepers**

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<sup>243</sup> Ibidem.

<sup>244</sup> See "The Pinochet Precedent, How victims can pursue human rights criminals abroad", Human Rights Watch Website

<http://www.hrw.org/campaigns/chile98/precedent.htm>.

<sup>245</sup> This recommendation has already been proposed by Verdirame *op. cit.*, p.286.

<sup>246</sup> R. Wilde, 'Quis Custodiet Ipsos Custodes? Why and How UNHCR Governance of "Development" Refugee Camps Should be Subject to International Human Rights Law, *op. cit.*

Training on trafficking in persons appears to be lacking across the PKO structure, thus this impacts peacekeepers ability to recognise trafficking syndicates when they might come across them. Consequently, providing a comprehensive and effective training program to a PKO is essential. This training programme should be designed for PKO members at all levels of the hierarchy in order to raise awareness and improve the recognition of and response to trafficking in persons and sexual exploitation in general, as well as create or strengthen anti-trafficking capacities. The training program should ensure that peacekeepers understand the UN code of conduct for peacekeepers, which provides that peacekeepers should not commit any act that could result in the physical, sexual or psychological harm or suffering to members of the local population, especially women and children. PKO should also provide in-depth gender sensitisation training to military and civilian staff and ensure the human rights unit systematically monitors and reports on issues of gender-based violence and crimes. Awareness and advice on the prevention of HIV/AIDS should also be integrated into the training of peacekeeping personnel.<sup>247</sup> A training program such as the one developed as a result of the Turin conference, that was outlined in the last chapter could serve as a model for all current and future PKOs to implement and adhere to.<sup>248</sup>

An office of oversight for crimes against women should be established in all peace operations. The office should regularly monitor and report on compliance with the principles set forth in the Inter-Agency Standing Committee (IASC) Task Force on the Protection from Sexual Exploitation and Abuse in Humanitarian Crises.<sup>249</sup> Member states and DPKO should increase women's representation in peace operations, including through the recruitment of police, military and civilian personnel.<sup>250</sup> The UN PKO should provide capacity building with a focus on women's human rights issues to national women's groups and human rights organisations across the country under the guidance of the gender specialist in UN human rights units. UN peace operations should collaborate with women's groups to address issues related to trafficked women in a peacekeeping environment.

## **5.5 Recommendations to the local government of the host country to combat trafficking**

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<sup>247</sup> As was recognised in Security Council Resolution 1308 (2000).

<sup>248</sup> Trafficking in Persons and Peacekeeping Operations- A Comprehensive Awareness and Training, Program, *op. cit*

<sup>249</sup> E. Rehn & E. Johnson Sirleaf, *op. cit.*, p.75.

<sup>249</sup> Ibidem.

<sup>250</sup> Ibidem.

There appears to be very little capacity to fight trafficking related misconduct by peacekeepers at the national level in most host states, nor does there generally seem to be any facilities to provide protection to the victim. In order to rectify this local criminal justice personnel in the host states require training in relation to trafficking related crime as well as women's and children's human rights issues. As for example, in Kosovo the current training focuses on standards and statutes without addressing the basic skills that act as the foundations of an investigation, prosecution, and adjudication.<sup>251</sup> Furthermore, current training sessions are usually too short, often only one day, and therefore there is no time to answer the many questions students have. It is often difficult to encourage local prosecutors to take anti-trafficking cases, even when presented with evidence and a victim willing and able to testify against their traffickers due to fears of organised crime networks.<sup>252</sup> Therefore training programs need to address the vital need to change attitudes amongst local police and prosecutors.

The local government should implement witness protection programs, to allow women and girls to testify against their traffickers. As recommended by Human Rights Watch, at a minimum witness protection measures should include full information about protection mechanisms available to victims in a language that the victim can understand, physical protection from harm, safe shelter, and short-term residence visas to allow victims to remain in the country temporarily in accordance with the Temporary Instruction of Treatment of Trafficking Victims, adopted by the Ministry for Human Rights and Refugees in September 2002.<sup>253</sup> Local governments should also provide appropriate support and protection for children involved in the process of testifying against traffickers. The psychological and development needs of the child should also be considered and everything must be done to protect the child from further physical or emotional harm. The local government should also create and provide financing for sufficient regional safe shelters to house trafficked women and girls, with staff members trained in caring for trafficking victims. NGOs and the local community should provide protection and assistance to victims, particularly where national authorities are unable or unwilling to do so.

## **5.6 Combating sexual exploitation in refugee camps**

UNHCR staff should create and maintain an environment that prevents sexual exploitation and abuse and promotes the implementation and enforcement of their newly established code

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<sup>251</sup> Turin conference report, *op. cit.*, p.22.

<sup>252</sup> *Ibidem*.



of conduct. UNHCR must promote a culture of protection in which reports of possible violations are treated seriously and confidentially. As already recommended by the OIOS, clear procedures and guidelines for the investigation of sexual exploitation of refugees and other related conduct that include reporting all such instances to the UNHCR Inspector General for appropriate monitoring are required.<sup>254</sup> The office of the Inspector General should conduct periodic spot-checking and undertake follow-up to ensure compliance.

A key problem that led to the deterioration of the situation in the camps that allowed sexual exploitation to breed was UNHCR's program in Africa being so drastically under funded. This resulted in an incredibly low number of protection staff in the camps. UNHCR needs to increase its field presence in order to ensure that they have an adequate number of staff working inside the refugee camps to better monitor camp activities and to guarantee that the refugees are indeed receiving the aid that they are entitled to. More female staff should be deployed as women refugees often find it easier to report abuses to female staff. UNHCR should improve the mechanisms of accountability to the communities they serve, with respect to both prevention efforts and response mechanisms. Many families in West Africa reported that girls felt obliged to earn money from prostitution, as the food rations were frequently inadequate, therefore UNHCR should ensure that current humanitarian aid provided to refugees meets minimum standards and basic needs. UNHCR should ensure that camp governance is conducted in an equitable manner that empowers women and children, and reduces the risk of sexual exploitation and abuse. UNHCR should also ensure that distribution processes, including the quantity of assistance and distribution methods, are designed in a manner that reduces opportunity for sexual exploitation and abuse. As UNHCR operates under the extreme pressures of emergencies, often logistics and assistance demands have been given more importance than protection. However protection issues are fundamental and should not be neglected. UNHCR should take steps to increase the security personnel and use modern technology such as employ security cameras to monitor the camps. A 24-hour police presence should be established in all camps.

UNHCR should continue to raise awareness and provide information on the nature and extent of refugee entitlements to the various forms of aid available. UNHCR should also continue to comprehensively review that the distribution of food and other aid, in all camps, is closely monitored to prevent abuse and exploitation. In order to empower the beneficiaries of the host community educational campaigns to combat sexual exploitation and explaining its

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<sup>253</sup> Human Rights Watch report, vol. 14. N0 9 (D) *op. cit.*, p.7.

consequences should also be implemented. UNHCR should promote the empowerment of girls, through incentives to encourage greater attendance of girls at schools. Refugee girls who are most vulnerable to sexual exploitation (e.g. from single-parent households, unaccompanied or separated children, street traders) should be identified and UNHCR should ensure they receive enough assistance, access to services and training aimed at making them more self-sufficient.

The UNHCR in cooperation with the host community should develop a mechanism that allows victims of sexual exploitation and abuse to report these incidents. Access to legal, judicial, or community-based recourse systems need to be facilitated in order for victims to seek redress in the form of disciplinary action against the perpetrator. Mechanisms for the confidential reporting of sexual exploitation by UNHCR staff should be implemented and UNHCR should continue to appoint centres in refugee camps to receive complaints. A concrete procedure dealing with issues of how to handle cases after the incidents needs to be outlined and properly implemented. A mechanism should be developed for monitoring victims to ensure that they do not face any repercussions as a result of having lodged a complaint. UNHCR protection staff should also continue to establish counselling centres in camps and ensure that refugees have access to comprehensive health care, including reproductive health care.

UNHCR staff need to be made more accountable to governments and donors in the implementation of actions to prevent sexual exploitation and abuse. For example, the initiatives described need to be incorporated in the job descriptions, employment contracts and performance appraisals system of UNHCR staff to ensure adequate attention to the prevention of sexual exploitation and abuse is given.

The above recommendations as well as some of the preventive measures already outlined in the last chapter need to be implemented globally in all existing and future PKO as well as in all UNHCR refugee camps, in order to combat and eradicate sexual abuse and exploitation. At the time of writing this paper the US is sending its troops to Liberia, on a humanitarian mandate, to establish peace and stability. Whilst pursuing the most commendable mandate to a country desperately in need of stability, this mission, as all global missions risk bringing new opportunities for sexual exploitation and forced prostitution to breed. Let us hope that some of the preventive measures and solutions, described in chapter four, that the international community have proposed from past experiences and perhaps some of these

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<sup>254</sup>Report of the Secretary-General on the activities of the Internal Oversight services, A/57/465 *op. cit.*, p.8.

recommendations will be implemented before this problem is allowed to flourish. If the US does neglect this problem and fails to take adequate preventive measures there is a danger the problem risks repeating itself.

## Conclusion

This paper has shown that wherever there is a peacekeeping presence and a mission to provide for basic human provisions enjoyed and granted to many, there is inevitably scope for sexual abuse and exploitation. The poor social and economic climate where peacekeepers are frequently stationed has created an environment in which sexual exploitation has been able to breed. In general these post-conflict situations can be characterised by the collapse the sovereign state, the justice system is no longer functioning, crime is rampant and women and girls are impoverished and vulnerable to abuse. A large influx of foreign, comparatively well-paid international peacekeeping personnel, often feed a demand for prostitution. Both the Bosnian and West African case studies demonstrate that sexual exploitation, rape, trafficking in women and children, sexual enslavement, and child abuse often co-exist alongside peacekeeping missions.<sup>255</sup> The alleged cases of sexual exploitation by UNHCR employees serve to enforce the notion that wherever there can be abuse there will be abuse. UNHCR staff have a duty of care to their beneficiaries, the refugee population and a responsibility to ensure that refugees are treated with dignity and respect. Sexual exploitation and abuse represent a betrayal of trust as well as a catastrophic failure of protection.

After widespread publicity and criticism the UN responded, in an effort to foster transparency, by commissioning an investigation into the situation in West Africa and establishing internal accountability mechanisms headed by the bodies such as the OIOS and the IASC. Other initiatives taken by the UN to combat the problem include gender sensitisation programs that focus on appropriate sexual conduct for peacekeepers. As well as gender mainstreaming whereby women's issues and concerns are incorporated into the mission design. The UN has also begun to deploy more female peacekeepers as well as gender specialists. The conference in Turin appears to have successfully developed and implemented a training-based comprehensive program to address and combat the trafficking in persons in PKO missions. This training program could serve as a model for all PKO missions globally. However it is acknowledged that training programs alone will not remedy the situation, but it would be an initial step to eradicating the problem. Any preventive action or indeed initiative to combat the issue of sexual exploitation, abuse and trafficking within PKOs has to operate together with the numerous other programs and efforts already in operation to improve capabilities in order to bolster political support and to harmonise the activities and understanding between the international and local communities.

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<sup>255</sup>Elisabeth Rehn & Ellen Johnson Sirleaf, *op.cit.*, p.65.

The UNHCR has now also acknowledged the issue of sexual exploitation and abuse is a serious problem. It has taken encouraging steps to combat this behaviour by integrating the prevention of and assistance functions of UNHCR staff to eradicate the problem and foster an environment free of sexual exploitation and abuse in humanitarian crises. The training programmes and initiatives adopted by the UNHCR are to be welcomed, as they empower the refugees making them less vulnerable to sexual exploitation, but they need to be supported and strengthened financially. All of the above initiatives are an important step as they focus on training and prevention of sexual misconduct, however they do not substitute for a full-fledged disciplinary mechanism or address the need of appropriate compensatory remedies for the victim.

Both the case studies demonstrate how UNMIBH and UNAMSIL have failed to adequately enforce codes of conducts, and have a record of a very high level of abuses and few prosecutions. As a consequence peacekeepers are still able to commit abuses with near impunity. UN missions in general appear to have failed to investigate in a transparent fashion the allegations of its own employees in facilitating and attracting sexual exploitation and trafficking for the use of forced prostitution. It is crucial that the UN and its member states enforce the codes of conducts to prosecute individuals associated with a UN mission. This paper has highlighted the need for an effective mechanism to fully monitor the activities of the UN and UNHCR's employees. The notion of human rights protection has been a tragic farce if victims of sexual exploitation, rape and trafficking cannot prosecute their abusers. There appears to be significant need to improve the existing enforcement mechanism as well as look for alternative mechanisms of justice. Prosecutions to provide justice are fundamental for a number of reasons, they operate to deter others from committing similar acts, to educate others that these acts are wrong, to deliver international peace and security and to heal the victim. A fundamental flaw in the current disciplinary system is it fails to provide for compensatory remedies to the individual victims.

A significant barrier to justice is that peacekeepers and UNHCR staff are frequently immune from the domestic system of justice of the mission. The Secretary – General should make full use of his powers to waive immunity in appropriate cases to allow prosecutions in the state where the mission operates, such as those where UN employees have engaged in trafficking or are involved in buying women and girls and their passports. In such cases blanket immunity serves only to diminish and undermine the role of national courts resulting in a watered down system of international justice and greater impunity. The transnational jurisdictional model needs to be substantially improved; a key problem in the current system

is that when peacekeepers are repatriated there is often no follow up in the home countries. If a peacekeeper is repatriated for disciplinary reasons related to sexual exploitation or trafficking, it is essential that the reasons for termination of their employment is duly recorded, and such individuals should be banned from serving in other UN missions. Information and intelligence-sharing needs to be improved between national and international police as well as inter-states. New mechanisms, perhaps some of those already suggested in the recommendations chapter, need to be implemented. Other mechanisms to make peacekeepers who commit sexual offences more accountable under the law could possibly encompass the universal jurisdiction model.

Where the UN takes on increasingly supranational activities or where the UNHCR is in *de facto* control of a refugee camp they should also be responsible to the people within the relevant territories. This means ensuring that victims of sexual exploitation, and trafficking related crimes have access to justice and that their complaints are heard in an appropriate legal forum. What is needed is a system that would make international organisations, like the UN and the UNHCR bound by international human rights law in the same way as a state is. Legal scholars have recently put forward a variety of arguments to make this theoretically possible. However in practice this may prove more difficult. Consequently international territorial administration, such as UNHCR refugee camps need to be supplemented by methods of political and legal control, otherwise the UN and the UNHCR are likely to appear more and more like a dictatorship of the many by the few, thereby undermining the organisation's legitimacy.<sup>256</sup> It must be reiterated without these reforms the UN will rightly be accused of double standards – of promoting democracy, justice and accountability within countries but not within its own institution.

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<sup>256</sup>White, Nigel D, 'Accountability and Democracy Within the United Nations. A Legal Perspective', *International Relations* Vol XII, Number 6, Dec 1997 p.18.



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# The price of peace: the case of sexual exploitation in UN peacekeeping missions

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