

Addressing Misconduct by UN personnel: How to Hold Offenders Accountable?

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Over the past decade, the number of United Nations (UN) peacekeeping missions around the world has significantly increased, and so has the number of peacekeepers. This increase in number, size, budget and importance has, in turn, drawn much scrutiny from scholars and the media. Allegations of sexual exploitation and abuse presumably committed by UN peacekeepers are perhaps one of the issues that have generated more controversy and criticism against these missions. In 2004, after serious accusations of sexual abuse emerged against peacekeepers in the Democratic Republic of the Congo (DRC), the Special Committee on Peacekeeping Operations asked the Secretary General to submit a comprehensive report analyzing the issue and providing recommendations to address it.[1] This report, known as the Prince Zeid Report, marked the beginning of a new UN strategy, launched in 2005, to address the problem of misconduct by UN peacekeeping personnel and prevent it from reoccurring in the future. This essay will first describe and analyze this strategy. It will then proceed to argue that the measures taken up to date are insufficient to resolve the issue, for they have not resulted in a more coordinated response to address the problem between the UN as an organization and Troop Contributing Countries (TCCs), who are ultimately responsible for taking disciplinary or legal action against their personnel. In order to overcome this shortcoming, this essay will recommend that legal experts from each TCC accompany their military national contingents; that the UN's zero-tolerance policy be extended to TCC; and that new mechanisms of cooperation between the UN and TCC be implemented.

A combination of different factors led the UN to implement reforms aimed at addressing and preventing sexual misconduct by its personnel. The first one is undoubtedly the gravity and relative recurrence of the accusations. Fighting against sexual abuse, human trafficking and prostitution ranks among the highest UN priorities, not only because such crimes have become a transnational threat to human security, but also because they constitute a clear violation of human rights. Although not a systematic phenomenon, multiple cases of sexual abuse by UN personnel have been documented throughout the 1990s and 2000s. Earlier reports revealing misconduct by UN troops originally emerged in Cambodia in 1992, after which came other accusations against members of missions in Bosnia and, more recently, in Haiti, Southern Sudan and the DRC. Peacekeepers from over 45 nationalities have been accused of sexual abuse and exploitation.[2] It has also been established that the vast majority of perpetrators are male peacekeepers who abuse women or young girls. According to Olivera Simic, these reports have illustrated "varieties of sexual offenses that range from forced prostitution, sex trafficking, rape, trading sex for food, and child pornography." [3]

Assessing the extent to which UN personnel is involved in these kinds of activities remains difficult because sexual exploitation and abuse is an underreported phenomenon. Victims often avoid reporting aggressions for fear of ostracism and institutions tend to deny or underestimate misconduct from their staff. However, scholars have identified a link between the number of peacekeepers and the number of cases of sexual abuse in some regions. Sarah Mendelson, for instance, argues that "as the number of peacekeepers [in the Balkans] increased in the mid-1990s, the number of females trafficked to the region jumped." [4] For her, peacekeepers in the Balkans in the 1990s were an important source of demand of sexual services in the region, which triggered a dramatic increase in human trafficking to that area. Similarly, Muna Ndulo, drawing on reports from the Secretary General, states that the number of allegations of sexual abuse and exploitation in peacekeeping missions amounted to 121 in 2004, 340 in

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2005 and 357 in 2006.[5] The real number is believed to be much higher, but, as explained above, accurate estimates are difficult to obtain.

Besides constituting brutal human rights violations, such actions have a devastating impact on a mission's legitimacy. Acquiring legitimacy is a slow process that requires regular and engaged work with the local population. However, accusations of sexual misconduct can easily cause a sudden loss of credibility from which the mission will hardly be able to recover. Therefore, it is of paramount importance for the UN to prevent situations that might spoil the efforts of the overall majority of its members. Despite the uncertainty regarding the scope of the problem, the number of documented cases has been large enough to severely affect the credibility of UN peacekeeping missions as a whole. Former UN Secretary General Kofi Annan himself stated that UN missions can only fulfill their objectives if they have "full trust of the countries [they] serve" and that "despicable acts like sexual exploitation and abuse" could jeopardize the legitimacy of the mission.[6] Even if isolated, sexual abuse cases attract much media attention and unfairly damage the reputation of the entire mission.

Sexual misconduct by UN personnel has negative effects both at the local and the international level. As Kate Grady puts it, "involvement of peacekeepers in SEA [sexual exploitation and abuse] damages UN credibility with respect not only to the UN's international reputation but also to its local reputation among the parties to conflict." [7] In the host country, it is likely that civilians will become, at the very, least reluctant to cooperate with contingents whose soldiers have been accused of abusing members of their community. In other cases, active opposition to the mission might arise as a consequence of sexual misconduct by UN personnel. As a result, allegations of sexual misconduct will make it extremely hard for UN staff to win the "hearts and minds" of the local population. Moreover, the actors involved in the conflict might also withdraw their consent, which is virtually equivalent to a withdrawal of the mission's authorization to remain in the country altogether. Once sexual scandals become public, they not only have a negative impact on the specific mission where they were committed, but also on the UN as an organization. When such situations arise, critics of UN peacekeeping operations are quick to point out the shameful paradox of peacekeepers who commit crimes against the very people they were meant to protect.[8]

Finally, the last major reason indicating the need of reform to address sexual misconduct by UN personnel has to do with the measures in place up to 2005, which had proven ineffective to solve the problem. The 2004 Zeid Report, submitted by Prince Zeid bin Ra'ad, permanent representative of Jordan to the UN, emphasizes this point in stating that the measures were "manifestly inadequate and that a fundamental change in approach [is] needed." [9] In fact, the problem started being addressed in the early 2000s. Prominent examples of procedures to prevent it include the establishment of Codes of Conduct for peacekeeping personnel in 2000 and the Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse in 2003.[10] However, despite the adoptions of these measures, in 2004 new cases of gross misconduct by as many as 152 peacekeeping personnel in the DRC came to light. After this new shocking scandal, it became clear that only a comprehensive strategy addressing the problem at all levels could be effective.

In his 2004 report, Prince Zeid provided recommendations to address the problem of serious misconduct by UN personnel in regards to four different areas: UN rules concerning sexual abuse and exploitation, investigations carried out by the UN, civil accountability of the organization and its commanders, and criminal accountability of UN personnel. Several measures endorsing these recommendations have since then been adopted by the UN and its Department of Peacekeeping Operations. This new comprehensive strategy was designed to address the problem at all levels and, therefore, is divided into three main components: prevention of misconduct, enforcement of UN standards, and remedial action.

The first measure aimed at preventing misconduct by UN personnel is the inclusion of mandatory training on sexual exploitation and abuse as part of pre-deployment orientations. The UN Conduct and Discipline Unit website also mentions awareness-raising campaigns as part of the prevention efforts. Specific details regarding this initiative, however, are not provided. Other preventative measures such as restricting the movement of personnel, requiring them to wear their uniforms at all times and imposing curfews also form part of the prevention plan undertaken by the UN.[11]

Addressing Misconduct by UN personnel: How to Hold Offenders Accountable?

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The creation of a Conduct and Discipline Unit (CDU) in 2005, specifically designed to investigate allegations of misconduct against UN personnel, is one of the central measures adopted to implement the second component of the UN strategy—the enforcement of the organization’s standards. Besides overseeing the standardized training on misconduct provided to all personnel, the CDU works together with several Conduct Discipline Teams (CDTs), which are currently deployed in 14 missions. The UN 2010 Year Review stresses the importance of this unit, stating that “up until [2005], there was no single institutional means available to the UN to systematically and comprehensively address misconduct committed by all categories of peacekeeping personnel.”[12]

This second part of UN reforms also includes new simplified mechanisms to enable community members to file complaints against UN personnel more easily. These mechanisms include “locked drop-boxes, private meeting rooms to allow reporting in a confidential setting, telephone hotlines, secure email addresses, regional focal points, local women’s organizations and the local UN-NGO network.”[13] Facilitating the complaint process is an important step towards determining the real scope of the problem of sexual abuse in peacekeeping missions. Simplified mechanisms allow women to report cases that would otherwise not be accounted for in UN statistics. In addition, a global database was created in 2008 to track allegations of misconduct and to prevent offenders from being rehired. Furthermore, a new “Memorandum of Understanding” between the UN and Troop Contributing Countries now provides specific procedures to follow in cases of allegations of misconduct against national contingent members.[14]

The third component of the strategy, remedial action, comprises services provided to victims of sexual abuse or exploitation by UN staff. The Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and Non-UN Personnel (2006) establishes that there should be an assistance mechanism for victims of sexual violence committed by UN personnel in every country in which missions are deployed. Services such as counselling, medical treatment and financial assistance are now provided to the victims.

While there seems to be a consensus among scholars that the measures adopted by the UN to address the issue constitute a step in the right direction, whether they are sufficient to solve the problem remains a source of debate.[15] Although, since the implementation of the policies, the number of allegations against peacekeepers decreased from more than 350 in 2006 to 85 in 2010[16], recent cases of misconduct show that the situation is far from being under control. As recently as 2007, 100 peacekeepers were repatriated from Haiti after they were found to be involved in cases of sexual abuse and exploitation. In the same year, 800 peacekeepers were suspended from their mission in Côte d’Ivoire for engaging in sex with children.[17]

Lack of enforcement of these official policies on the ground is one of the reasons why their effectiveness has been limited. A UN official working with the mission in the DRC in 2007 argued that “while there has been no shortcoming insofar as disseminating the code of conduct and the [...] zero tolerance policy on matters of sexual exploitation and abuse, the same cannot be said for enforcement of this.”[18] It seems, therefore, that there might be a disconnect between the DPKO headquarters and the missions it runs. Furthermore, responses to allegations of misconduct have often focused on revising codes of conduct and reforming training programs, while little progress has been made in finding ways to hold accountable those who are found culpable of misconduct.

Only when those who are found guilty of sexual abuse against women start being punished will the UN be able to eliminate this scourge. Consequently, accountability has to be a central component of the solution. First and foremost, the pursuit of justice is one of the most important aspects of victims’ reparation. Justice for the victims, in turn, is only possible insofar as those who committed the crimes are penalized for their actions. Therefore, if the UN is committed to repair victims, it must explore ways to ensure that offenders are punished. Furthermore, impunity will further erode a mission’s legitimacy and credibility. The non-prosecution of offenders is seen by the local community as a proof that peacekeepers can abuse their position of power without serious consequences. Finally, accountability will also act as a means of deterrence. If peacekeepers know that not complying with the UN standards will bring serious consequences, they will be less inclined to break their Code of Conduct. On the other hand, perceptions that misconduct will not be penalized will set a dangerous precedent for the future. The UN official cited above further elaborates on this point, stating that, in some missions, “the feeling of impunity is such that not only have the policies [to prevent sexual abuse and exploitation] not been enforced, but the command structures have not always given

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investigators their full cooperation.”[19]

However, finding effective solutions to the issue of accountability of UN personnel requires first an understanding of the complicated and paradoxical situation in which the Organization finds itself. While the United Nations is responsible for preventing misconduct by its personnel and receives harsh criticism when such allegations become public, it has no authority to hold its own personnel accountable. As Murphy explains, “the UN has no legal authority to prosecute those against whom evidence of wrongdoing is found. At most it can repatriate a peacekeeper to their country of origin, but it cannot ensure the prosecution of that person once they have returned home.”[20] Furthermore, current missions have up to five different categories of personnel, each with a different legal status.[21] Consequently, procedures for dealing with accusations of sexual misconduct vary according to the category to which the alleged wrongdoer belongs. The largest category –to which the majority of offenders belong—corresponds to members of military national contingents, who have complete immunity and therefore cannot be judged by the host country or by the UN. These highly complex legal matters explain why Prince Zeid’s recommendation of having a fixed set of rules to deal with allegations of misconduct that would apply to all categories of peacekeeping personnel have not been met with success.[22]

Since countries have constantly been reluctant to revoke the immunity of their personnel under any circumstances, it is clear that trials in host countries will not occur and that other alternatives must be explored. One possible solution to ensure that perpetrators of abuse are held accountable in their home country is to include independent legal experts that would accompany their country’s national contingent.[23] By including legal experts in national contingents, the TCC ensures that all the evidence against its nationals is collected in compliance with the country’s rules and that all the actions for which soldiers are being charged indeed constitute crimes under the home or the host country’s laws. Once repatriated, the soldier would face a criminal process with all the guaranties that his country’s legal system offers. Trying peacekeeping personnel in their home countries dissipates TCCs’ concerns that their nationals would not have their right to the due process respected if tried abroad. Furthermore, this is a relatively little costly measure that would ensure that perpetrators of abuse are not freed due to errors in the collection or handling of evidence.

As a multinational organization, it is imperative for the UN to work closely with member states at all times. Given the organization’s inability to take disciplinary action against individuals under its command, this is especially relevant in regards to investigations of sexual abuse and exploitation by UN personnel. Therefore, it is recommended that the official zero-tolerance of the UN also be adopted by member states. Since only TCCs are entitled to try their personnel, their zero-tolerance is crucial in order to stop sexual abuse and exploitation. As Anna Shotton puts it, “it [is] clear that to address the problem of sexual exploitation and abuse effectively, DPKO needs to work with Member States to find a joint solution.”[24] In order to develop such joint strategy, it is important that in the Memorandum of Understanding, TCCs commit to take disciplinary or legal action against personnel who are repatriated as a result of misconduct. TCCs should also commit to keep the UN informed about measures taken and the outcome of the legal process. Finally, member states should agree on sanctions for countries that fail to comply with these commitments.

Information sharing between the UN and TCCs in investigations of sexual misconduct allegations would also be an important step towards ensuring accountability of UN personnel. Prince Zeid mentions in his report that in numerous cases the UN has refused to provide the TCC with evidence it has gathered against its peacekeepers, following a policy of not releasing information that third parties could subsequently use against the Organization. TCCs, lacking the documentation that could confirm misconduct by its troops, have often decided not to take action based on UN confidential investigations.[25] The UN should therefore agree to share its information with member states as a means to assist TCCs with legal processes against peacekeepers and prevent impunity. Findings from investigations carried out by national contingents should also be shared with the UN to ensure that those who were involved in cases of sexual abuse and exploitation are expelled from the Organization and are included in the database of wrongdoers. In sum, sharing information between the UN and TCCs can only benefit both parties. More information and more cooperation will lead to more effective investigations and, ultimately, less impunity. It is in both the UN and TCCs’ best interest to identify and punish individuals that are damaging their image.

The history of peacekeeping is that of a quiet success. Throughout decades, thousands of peacekeepers have

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strived to help countries emerging from civil conflicts. However, allegations of sexual abuse and misconduct involving UN personnel have tainted both the Organization and the peacekeepers' reputation. Peacekeepers from different missions around the world have been found guilty of rape, human trafficking, child pornography and other serious crimes. The UN has since 2005 implemented a set of reforms to address the issue and prevent it from reoccurring in the future. Although these reforms led to a decrease in the number of allegations, lack of accountability of wrongdoers continues to be an obstacle to further progress. The UN, as the ultimate responsible entity for individuals under its command, should design new strategies to ensure that offenders are punished. Including legal experts from TCCs in national contingents, having a uniform policy of zero-tolerance across TCCs, and sharing information related to investigations of cases of possible sexual abuse would all contribute to this goal. While it is true that the UN has no authority to take legal action against its peacekeeping personnel, it is important to acknowledge that the UN is nothing but the collective will of its member states, who do have authority –and responsibility- to punish those who have committed crimes; hence the need to work together.

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Addressing Misconduct by UN personnel: How to Hold Offenders Accountable?

Written by Ivo Martinich

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