Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It

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Peacekeepers and Prostitutes
How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It

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On numerous occasions in the past fifteen years, U.N. peacekeepers have been accused of sexually assaulting or abusing the populations they serve. A Comprehensive Review of peacekeeper misconduct completed in 2005 identified significant problems and recommended numerous changes to address them. The U.S. Army and NATO, in a response to the possibility that their deployed troops will be engaged in or facilitate human trafficking, have enacted new policies intended to remove their troops from the demand for women trafficked for sexual services. The Department of Defense and NATO initiatives are similar to those being considered by the United Nations for preventing sexual misconduct by its peacekeepers. Because the United States, NATO, and the United Nations are all addressing the problems of sexual misconduct by deployed troops, their efforts should be mutually reinforcing. The examples of American and NATO armed forces offer hope that the United Nations will also enact strong measures to prevent future misconduct by its peacekeepers.

Keywords: human trafficking; peacekeepers; sexual misconduct

In March of last year, Jordanian Prince Zeid Ra’ad Zeid Al-Hussein’s Comprehensive Review of allegations of sexual abuse by peacekeepers in the Congo was released. The story had first appeared the previous autumn, when newspaper accounts reported 150 allegations of sexual assault by peacekeepers, including 68 cases of rape, pedophilia, and prostitution. Most of the allegations involved peacekeepers from Pakistan, Uruguay, Morocco, Tunisia, South Africa, and Nepal. The prince’s Comprehensive Review found, among other things, that peacekeepers had enticed desperate women and children to engage in sexual acts for a pittance of money or a small piece of food, sometimes giving them money or food after raping them to make the intercourse appear consensual, and that these crimes were widespread and ongoing. Beyond the sexual crimes, the prince noted a perception that “whistleblowers would not be protected” and described as “inexcusable” the failure of contingent commanders to cooperate with an investigation. These comments may have been toned-down allusions to material contained in an earlier draft of his report.
According to published accounts of the earlier draft, the prince found evidence of peacekeeper obstruction of U.N. investigations into the crimes, paying or offering to pay witnesses to change their testimony, threatening investigators, and refusing to identify suspects.

All in all, the report painted an ugly picture of peacekeeper misconduct. In a news conference held to announce and respond to it, the secretary general acknowledged evidence of “gross misconduct” by peacekeepers and expressed his outrage. The international community had established an armed force to control aggression in the Congo, and they had been accused of, and apparently engaged in, large-scale rape and pedophilia, with the Congolese population as their victims. The secretary general must also have understood that as a result of the way peacekeeping forces are marshaled and employed, none of these crimes would ever be punished. Once again, events had revealed another side of the United Nation’s weak underbelly: its inability to control and discipline its troops while in the field.

This article will briefly examine historical relationships between peacekeepers and the sexual abuse of local populations and will examine the legal issues and technical problems that result in a massive failure to hold modern peacekeepers accountable for crimes such as rape and pedophilia. It will consider Prince Zaid’s report, including his recommendations for change in U.N. practice and procedure against a background of similar developments in the U.S. military and at NATO headquarters. Although the U.S. and NATO initiatives are directed more against the challenge of human trafficking than against rape and pedophilia, the initiatives of all three entities share a common thread: the challenge of deployed troops’ sexually abusing local populations. Taken together, it appears that three major providers of deployed troops are initiating changes that will make this abuse less likely. At least there is reason to hope so.

In an era when civilian control of the military is the gold standard and the United Nations is facing demands for reform on every side, yet another area in which reform must be undertaken has risen to the surface: the near-total lack of ability to discipline peacekeepers. Because these forces currently number nearly 68,000 personnel deployed across the globe in seventeen different missions, it is imperative that a mechanism be developed for effectively preventing peacekeepers from ravaging the populations they serve.

**Background**

The secretary general’s outrage upon learning of events in the Congo was certainly appropriate, but he could not have been surprised. There is a long history of U.N. peacekeepers engaging in sexual misconduct while deployed. Within a ten-year period preceding the prince’s report, similar complaints had also surfaced in Cambodia, East Timor, and West Africa. More than ten years ago, when nearly fifty thousand peacekeepers descended on Bosnia-Herzegovina, a trade in trafficked
women sprang up nearly overnight outside the gates of U.N. compounds.11 “The sex slave trade in Bosnia largely exists because of the U.N. peacekeeping operation. Without the peacekeeping presence, there would have been little or no forced prostitution in Bosnia,” said David Lamb, a regional human rights officer in Bosnia during 2000 and 2001.12 Graca Machel’s 2001 study, titled The Impact of War on Children, reported that in half of the postconflict country case studies from the 1990s, the arrival of peacekeepers was associated with a rapid rise in child prostitution.13

Hearings conducted by the U.S. House of Representatives in the fall of 2002 revealed that Stabilization Force (SFOR)14 members were patronizing Bosnian brothels where trafficked women were kept and having sex with underage girls. There were also reports of International Police Task Force police officers and SFOR soldiers actually “buying” trafficked women15 and actively participating in the trafficking of women into prostitution by forging documents, recruiting, and selling women to brothel owners.16 Even so, the United Nations reportedly responded to the Bosnian abuses of the late 1990s with something akin to denial. Former U.N. Human Rights investigator David Lamb later testified before the U.S. House Committee on International Relations that he and his investigators experienced an astonishing cover-up attempt that seemed to extend to the “highest levels of the UN headquarters,” with the United Nations launching its own investigations against his investigators.17 None of the peacekeepers involved in these offenses suffered any punishment greater than repatriation,18 but the combined effect of these embarrassing incidents finally produced a reaction. In early 2003, the secretary general promulgated detailed rules prohibiting sexual exploitation and abuse that apply to all U.N. staff.19

Unfortunately, U.N. staff are but a small minority of the membership of a peacekeeping mission. Most peacekeepers are soldiers on loan from “troop-contributing countries” (TCCs). With respect to them, the United Nations has no disciplinary authority. They serve under the operational control of the United Nations but remain members of their own national establishments and subject to discipline only by their national authorities.20 The U.N. Organization Mission in the Democratic Republic of the Congo (MONUC), for example, boasts 972 international staff and 16,177 uniformed military personnel from forty-nine TCCs.21 Police services are provided by 192 civilian police officers from twenty nations, including “four female officers to beef up the gender section.”22 As of this writing, six TCCs comprise nearly 80 percent of the military forces. Pakistan provides 3,796; India, 3,543; South Africa, 1,316; Bangladesh, 1,316; Uruguay, 1,273; and Nepal, 1,139.23

With peacekeeping missions composed of such a diverse assembly of actors subject to an equally diverse set of disciplinary rules,24 the challenge of preventing or punishing sexual misconduct is enormous. Prince Al-Hussein’s Comprehensive Review examined the institutional, jurisdictional, training, investigative, and other factors that allowed peacekeepers to commit crimes with apparent impunity and proposed several ambitious measures that could contribute to a solution. But can the
United Nations act in a way that is decisive and effective, given its lack of real control over the troops it employs in peacekeeping and the long history of past abuses that have gone unpunished? Fortunately, there is reason to hope so.

The Comprehensive Review comes at a time of sharply growing awareness that military troops posted abroad contribute significantly to the demand for trafficked women, a brand of modern-day slavery that is drawing increasing attention by international organizations and national governments around the world.25 There is also a growing consensus that what was once dismissed as boyish behavior or the harmless satisfaction of natural desires has become an unacceptably close connection with forced prostitution, human slavery, and organized crime.26 This connection makes it increasingly unacceptable for modern armed forces to support the sex trade that fuels them all. As a consequence, the United Nations is not alone in trying to control the sexual appetites of deployed forces. Recent reports concerning American forces in Korea that caused similar public embarrassment has led the U.S. Department of Defense to take serious corrective measures that apply to all its deployed forces. NATO is not far behind. The confluence of all these efforts to reduce the relationship between peacekeepers and prostitutes may amount to “a tide in the affairs of men, which taken at the flood, leads on to fortune.”27

Deployed soldiers often contribute to the demand for prostitutes, which often means a demand for trafficked women and children. Peacekeepers who abuse the local population by supporting human trafficking, or by raping or abusing the populations they serve, are anathema to an organization responsible for international peace and security. Troops of any kind whose sexual activities support human trafficking and organized crime must likewise be brought to heel. The time is right for a comprehensive solution that will remove deployed soldiers from the demand side of the equation.

The Problem of Peacekeeper Sexual Misconduct

What leads peacekeepers to engage in acts of rape, pedophilia, prostitution, and human trafficking, and what can be done to tame them? The Comprehensive Review identified a number of factors that contribute to the problem and offered some recommended solutions. As it turns out, the U.S. Army and NATO have recently come to grips with similar problems and have begun to address them in similar ways.

Immunity

There is a perception among peacekeepers that they are immune from prosecution for crimes they may commit while deployed.28 In many cases, this is true. When a TCC supplies peacekeeping soldiers to the United Nations, it does so under a Memorandum of Agreement that preserves its right to discipline its forces. The United Nations then enters into a Status of Forces Agreement with the host nation.
where the peacekeepers will be deployed, under which the host nation waives jurisdiction over peacekeepers for violations of host-nation law. As a consequence, the TCC has exclusive jurisdiction to punish its soldiers and the host nation has none. The lack of host-nation jurisdiction over peacekeepers within its borders gives these troops de facto immunity from prosecution there.

Ironically, the “de facto immunity” that protects soldiers is supplemented by a more formal guarantee that protects many others on the peacekeeping mission. For some, actual immunity is anchored in the U.N. Charter itself. Article 105 grants to U.N. officials “such privileges and immunities” as are necessary for the independent exercise of the United Nations’ functions. Implementing this provision, the Convention on the Privileges and Immunities of the United Nations further outlines the treatment of U.N. personnel, granting to certain classes of officials broad protection that includes “immunity from personal arrest or detention, and immunity from legal process of every kind.” In addition, there are several types of employees in the peacekeeping arena, each with a different legal status and level of immunity. U.N. staff are accorded full diplomatic immunity, including unlimited “immunity from arrest and detention.” While this functional immunity is restricted to “official acts and words spoken or written in an official capacity,” the United Nations claims the exclusive capacity to determine what constitutes an official act to prevent local courts and officials from undermining the immunities of its officials. U.N. volunteers have recently been accorded the same privileges and immunities. Individual contractors and consultants are “subject to local law” and are bound by the standards set out in the United Nations’ standard contract conditions for contractors and consultants. Civilian police and military observers have a more modest immunity, limited to that “necessary for the independent exercise of their functions during the period of their missions” but that includes “immunity from personal arrest or detention and from seizure of their personal baggage.”

Military personnel, who comprise the great majority of peacekeepers, are subject only to the jurisdiction of the TCC. The host nation agrees that the peacekeepers are “subject to the exclusive jurisdiction of their respective participating states in respect of any criminal offense which may be committed by them.” As a consequence of this arrangement, their grant of actual immunity is limited to official duty acts, but their immunity from local law is complete. If the TCC exercises its jurisdiction to discipline troops who commit crimes abroad, this arrangement will work well, but as Prince Al-Hussein noted, several problems make TCCs unlikely to actually exercise jurisdiction over their troops. The result is that many crimes committed by deployed peacekeepers simply go unpunished.

The convention’s immunity provisions are complemented by a caveat. Whenever, in the opinion of the secretary general, “immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations,” he may waive the immunity of a U.N. official. In like circumstances, the Security Council may waive the immunity of the secretary general. Notwithstanding this
authority, the circumstances under which the secretary general would waive immunity for a U.N. peacekeeping official under this authority must be rare indeed and would likely require a heinous crime, a TCC that unreasonably refused or declined to take cognizance of the offense in its domestic courts, and a functioning judicial system in the host nation that was capable of delivering a proper trial. To the author’s knowledge, such a waiver has never been issued, and TCCs would likely be strident in their opposition. But the tool is there for use in the appropriate case and to remind TCCs of their obligation to act responsibly when one of their own is accused of a serious crime abroad. Before we reach this remote possibility, there are more mundane obstacles to the imposition of discipline on peacekeepers abroad that must be addressed.

Technical Issues

First, the United Nations has abandoned the past practice of requiring the TCC to commit to exercising its jurisdiction over errant troops. This leaves the TCC with the right but not the obligation to even consider disciplinary action. Furthermore, TCCs are often embarrassed by reports that their troops committed crimes abroad and, thus, are inclined to keep criminal charges such as human trafficking, rape, and pedophilia as quiet as possible. Even when TCCs are conscientious and want to hold their troops accountable, they often find that the criminal investigations against their troops are inadequate, incomplete, or failed to collect evidence in a manner compliant with TCC law. In these cases, even if the TCC is willing and able to prosecute its troops for crimes committed during peacekeeping deployments, the evidence is inadmissible under their rules of evidence or insufficient to sustain a conviction in the domestic courts of the accused. The result is an understandable inability to prosecute even if they want to.

The solutions to these issues are as varied as the problems. TCCs should be required, as a condition precedent to sending troops on a peacekeeping mission, to promise that they will examine every report of misconduct by its troops, at least consider discipline in every case, and report their decision in each case to the United Nations. The United Nations must begin to use modern evidence-collection techniques, including forensic evidence gathering and handling, to identify perpetrators. Collection of witness statements and other evidence must be in accordance with the domestic law of the accused soldier’s TCC so the evidence will be admissible and sufficient when the soldier and the report are returned home. This will require a legal advisor, trained in criminal law and procedure, from the TCC that supplied the accused as the investigation proceeds. Sexual assault counselors and support personnel such as are common in Western systems need to be trained, culturally oriented to the country where peacekeepers operate, and assigned to support victims of crimes as they negotiate the criminal investigation system. Four female officers in “the gender section” of a peacekeeping force approaching twenty thousand is unlikely to be enough.
In addition to these technical improvements, the prince noted that many nations do not have the ability to conduct courts-martial on site but require the offender to return and be tried in the TCC’s domestic courts, far from the evidence and witnesses. Courts-martial conducted in the host country, he noted, would “afford immediate access to witnesses and evidence in the mission area” and would “demonstrate to the local community that there is no impunity for acts of sexual exploitation and abuse by members of the military contingent.” A military trial conducted under an accused peacekeeper’s own national law but held where the offense occurred and where the witnesses and evidence are located would be a significant step forward. Soldiers would have significantly greater incentive to obey the law because the possibility of a prosecution would be more immediate and more real; prosecutors would have greater ease locating evidence and witnesses and bringing them to trial and, thus, more success in prosecution; in addition, victims would be able to appear, testify against their attackers, and see the matter brought to a prompt and lawful conclusion. On-site courts-martial would be a confidence building measure that would demonstrate the peacekeepers’ commitment to the rule of law. The prince believes that “all troop-contributing countries should hold on-site courts martial” and that TCCs “whose legislation does not permit on-site courts martial should consider reform of the relevant legislation.” For TCCs that do not have portable military courts that can hear evidence and determine guilt in a deployed location, the evidence will have to be collected and shipped home with the repatriated soldier for a prosecution there. This system has proven inadequate in the past, but it may prove a suitable substitute for on-site military trials if the evidence is collected in a manner that will make it admissible and sufficient in a domestic trial and if the TCC is required to report to the secretary general on the results of the case.

Peacekeeper Training and the United Nations’ Commitment

Immunity from local prosecution and the unlikelihood of any prosecution are not the only things that have fostered an atmosphere ripe for sexual abuse in past peacekeeping missions. The U.N. training program for peacekeepers has also played a part. A 1998 U.N. training manual on HIV/AIDS prevention told peacekeepers that some “men, women, or even children” in the area where they would be performing their peacekeeping missions “may have been forced into prostitution” and that the peacekeepers “should consider carefully” whether to “support and enforce that kind of circumstance by using their services.” The manual indicates that rape and other kinds of sexual violence may be occurring in the areas where they will be deployed and asks them to “consider whether they may be able to avoid such unfortunate situations.” This is about as lukewarm an injunction to avoid sex with potentially trafficked women as could have been devised. Current peacekeeper training programs are more forceful, including a hefty manual aimed at increasing sensitivity to gender-related issues and protecting women and children.
The abuses described at the outset of this article resulted from a combination of essentially complete immunity and lukewarm training about human trafficking. Soldiers from developing nations were sent to countries in despair, given immunity from prosecution, and told to “consider carefully” whether to have sex with desperate locals who had been forced into prostitution. It is no wonder that the United Nations has experienced a rash of peacekeeper and sexual abuse cases in years past. The issue for today is whether the secretary general can turn this situation around.

The imposition of new and stricter standards for peacekeepers, including an increased possibility that they will be punished for misconduct abroad, should not overly concern TCCs. They will undoubtedly retain the first right they have now to decide whether to punish their own troops and to administer any punishment under their own national laws. Better evidence, including forensic evidence, collected in accordance with their national legal requirements can only make their job easier. Better training, increased sensitivity to gender issues, and enhanced recreation facilities for their troops abroad are not overly burdensome and must be seen as a feature of the landscape for participation in future peacekeeping operations. But, at the end of the day, the United Nations is an international organization, and it will adopt the measures that the majority of its members accept. It is unlikely that TCCs will be threatened by measures they have not had a hand in crafting.

The American Experience

It is fortunate for the United Nations that they are not the first to be embarrassed by revelations of sexual misconduct by deployed troops or the first to address the problem. The U.S. military has a long history of overseas military deployments and has also experienced recent embarrassments involving its troops. During and after the Vietnam War, U.S. military officials inspected and certified the health of prostitutes who might come in contact with American troops in parts of Thailand, Korea, Vietnam, and the Philippines and organized Rest and Recreation facilities that included easy access to prostitutes. Some have criticized this level of involvement and argued that the relationship between official U.S. action and prostitution became so close during this period that the United States was essentially “operating” its own brothels. Other foreign wars have seen the development of similar situations.52

In May of 2002, a televised Fox News report suggested that U.S. Forces Korea (USFK) troops performing “courtesy patrols” in off-base establishments that employed trafficked women were protecting those establishments rather than the troops who frequented them.53 The implication that U.S. military leaders in Korea were implicitly supporting prostitution, and perhaps even sexual slavery and the trade in trafficked women, was unmistakable. Stung by this report, thirteen U.S. congressmen requested a “thorough, global and extensive” investigation by the Inspector
General (IG) of the Department of Defense. His investigation was carried out in two phases, with the first phase addressing Korea and the second phase focusing on Europe, specifically on Bosnia-Herzegovina. The reports were issued in July and December of 2003.

While the IG disagreed with Fox News’s conclusion that USFK personnel were “protecting” establishments that employed trafficked women, he did conclude that relations between the patrols and the clubs were “overly familiar” and that military officials had overlooked concerns about human trafficking. More important, the report corroborated the allegation that many of the women who worked in these establishments had in fact been trafficked and that they had suffered such offenses as confiscation of personal identity papers and physical violence. The incident and the results of the IG investigation caused a pronounced reaction in the U.S. Army that affected all the armed forces of the United States. The Department of Defense established a “zero-tolerance” policy, which decreed that “neither our Armed Forces nor the contractors who support them will be complicit in any way in the trafficking in persons” (emphasis mine). The policy defines trafficking broadly, to include involuntary servitude and debt bondage as well as sexual slavery. As a result of the broadcast and its fallout, the Commander of U.S. Forces in Korea expanded the use of “off-limits” areas, prohibiting U.S. personnel from patronizing establishments that had been placed off-limits because of their suspected involvement in human trafficking.

The zero-tolerance policy and expanded use of off-limits areas has been combined with an expanded education campaign for all U.S. troops reporting for duty in Korea. All new arrivals, including Navy ships visiting Korean ports, are exposed to countertrafficking training that alerts troops and sailors to the issue of trafficking, identifies off-limits areas, emphasizes the zero-tolerance policy, and describes disciplinary measures available for violations. Other initiatives to reduce American military patronage of off-limits establishments include expanded on-base recreational activities; expanded cultural, service, and educational opportunities both on and off base; a twenty-four-hour hotline where military personnel can report businesses suspected of trafficking; antitrafficking TV advertisements seen by both American and Korean populations; and a “Prostitution and Human Trafficking Identification Guidebook” that helps military personnel identify and avoid establishments that appear to be engaged in trafficking. Courtesy patrols and undercover operations in areas where trafficking may be occurring further monitor the activities of U.S. personnel and discourage patronage of establishments that employ prostitutes.

The U.S. experience in Korea has confirmed that the economic impact of off-limits designation has been effective in dissuading businesses from engaging in these practices. As a result of the U.S. initiatives there, prostitution is harder to find. Charles Johnson, the USFK Action Officer for the Prostitution and Human Trafficking Working Group, describes the changes in this way:
I have seen the results [of the antitrafficking initiatives]. In 2000-2002, I was assigned to the 2d Infantry Division, at Camp Casey, Tongduchoen (TDC) Korea. TDC was notorious for the strip of bars outside the front gate of Camp Casey, and the bars in Toko-ri outside neighboring Camp Hovey. You could not go into a bar, or walk down the street at night without being propositioned. If walking alone, ajumas (old Korean ladies) would try to pull you into alleys to see some “pretty young girl”. This past February, I was in TDC conducting a P&HT check, I was not propositioned at all, the ajumas are gone. The bars now have Filipino “juicy” girls who will sit with a customer for a $10-$20 drink. The MP’s and Courtesy Patrols now play “morality police” ensuring no inappropriate touching is going on. I will not tell you prostitution is not going on . . . it is just much more under the table . . . more difficult. Now service members must look for it, versus three years ago when it was pushed at them in the bars and on the streets.60

The Army’s embarrassed reaction to Fox News’s report may also have been on President Bush’s mind when he addressed the U.N. General Assembly in September of 2003. He identified human trafficking as a “special evil” that merited their attention and devoted a substantial portion of his remarks to the topic.61 In February of 2004, the president issued Executive Order 13257 establishing a task force to combat trafficking.62

In another remarkable innovation, on September 15, 2004, the Department of Defense Joint Service Committee on Military Justice added an unusual proposal to its annual list of proposed changes to the Uniform Code of Military Justice (UCMJ),63 a federal criminal code that applies to active-duty military personnel twenty-four hours a day, worldwide. Under the UCMJ, U.S. military personnel can be tried for military offenses such as disrespect and failure to obey orders, as well as the more traditional criminal offenses.64 The unusual proposal was a new criminal offense of “patronizing a prostitute,”65 intended to remove U.S. military personnel from the demand for commercial sexual services anywhere they may be deployed.66 The proposal was enacted into law in October 2005, with an effective date of November 15.67 After that date, U.S. military personnel risk criminal punishment for paying for sexual services.

While the full effect of these initiatives remains to be seen, they appear to comprise a forceful response to American military involvement in prostitution and the issue of human trafficking. The zero-tolerance policy prohibiting any American support for or “facilitation of” human trafficking, together with the other elements of the response in Korea, strikes this author as a full tool kit that the United Nations might well emulate. Indeed, many of the prince’s recommendations for changes in U.N. peacekeeping reflect the same or similar insights.

NATO Responds

NATO is another international organization that deploys troops on a variety of international missions. Its response to the relationship between deployed forces and
trafficked women began in the fall of 2003. By March 2004, the American and Norwegian ambassadors to NATO hosted the organization’s first conference to address the problem of human trafficking and to consider whether NATO personnel posted abroad were contributing to the demand. By June, NATO had developed a Policy on Combating Trafficking in Human Beings that received the endorsement of NATO Heads of State and Governments at the Istanbul Summit. The NATO policy calls upon all NATO member states, and all non-NATO states that contribute troops or civilian personnel to NATO missions, to do all that they can to ensure that their troops do not contribute to or support trafficking in persons in any way. The key language of the policy prohibits NATO forces, contractors, and employees conducting operations under NATO command and control from “engaging in trafficking in human beings or facilitating it.”

Like the American practice in Korea, the policy requires participating nations to conduct antitrafficking education campaigns for their troops and to amend their laws so that their nationals can be punished for “engaging” in trafficking or “facilitating” it. Unfortunately, because the policy defines trafficking but does not define facilitating, it appears to leave open the most important question: whether patronizing a prostitute “facilitates” trafficking in persons. Ironically, this precise question was put to Ambassadors Burns and Eide during a NATO press conference to announce the new policy, in these terms:

Ambassador, you’ve made it very clear that in terms of Norway and the United States the zero tolerance means no procurement of sexual services at all. Is that what the other 44 countries have joined up to? Are they saying that their soldiers cannot visit prostitutes under any circumstances, or are they saying only that it’s if you know that this is a trafficked person you should not be involved? Is it a ban on prostitution for the military around [sic] the whole 46 countries involved?

Here, where a direct answer would have cleared the air, Ambassador Eide seems to have waffled: “This policy addresses trafficking in human beings. That means purchase of sexual services linked to trafficking. That being said, it is in this situation, very, very difficult sometimes to see the difference, um?” (emphasis mine). Clearly, NATO personnel who are actually trafficking in persons will be liable to punishment under this policy, depending on how their nations have implemented it. If NATO policy permits NATO troops to continue patronizing prostitutes as long as it is unclear that the prostitutes have been trafficked, the policy is considerably more lenient and likely to be less effective than that adopted by the United States. The guideline that applies to NATO staff personnel, however, sounds much like the Department of Defense’s zero-tolerance approach: “NATO Staff . . . shall not engage directly or indirectly in trafficking in human beings, including for the purpose of sexual facilitation, nor facilitate it. In this regard, they shall not patronize any establishment or premises . . . which . . . could reasonably be expected to promote or facilitate trafficking in human beings.”
As in U.N. peacekeeping operations, troops supporting NATO operations are disciplined only by their own nations.\(^7\) The result of the NATO policy statement will inevitably be a variety of disciplinary provisions that suit the national characters of the various NATO members. The United States and Norway favor a full prohibition against patronizing prostitutes at any time or place.\(^6\) Lithuania has announced that its troops cannot be prosecuted for patronizing prostitutes but that they will face an unspecified “moral or disciplinary assessment.”\(^7\) Other NATO countries will implement the policy statement in a variety of ways that conform with their national laws and customs. Prostitution is legal in Germany and the Netherlands, for example, and these countries might take a more tolerant view of their troops’ behavior abroad.\(^8\)

The resulting patchwork of implementing legislation will almost certainly be inconsistent in many ways, but it is just as certainly a step in the right direction.

Although the disciplinary results and methods of implementation will vary from one country to the next, the policy statement also urges member nations to develop reporting mechanisms and retain records of their actions in individual cases.\(^7\) Although there is no requirement that TCCs report the results of their disciplinary actions to NATO, there is clear pressure to discourage any action that might support or facilitate human trafficking and to identify accused violators and record the action taken against each. At least this should close the circle, forcing member states to take and record some action when their troops are involved with prostitutes while on mission. Both criminal prosecution and “moral assessment” should have some deterrent effect on the individual deployed troops. States sending troops to NATO operations should respond to this encouragement by giving their troops a serious introduction to the evils of human trafficking and its relation to prostitution.

Some European nations may simply be unable to criminalize the use of prostitutes. Professor Michael Noone has noted that under British military law, “a superior has the right to give a command for the purpose of maintaining good order and discipline . . . or for the execution of a military duty or regulation or for a purpose connected with the welfare of the troops. . . . Challengers may ask how paying for sexual favors, rather than accepting them gratuitously, affects ‘good order.’”\(^8\) European nations that have signed the European Convention on Human Rights might also be challenged by a claim that such a new offense is not “in accordance with national law” or “necessary in a democratic society,” especially in countries where prostitution is legal.\(^8\) The prosecution may respond with evidence that supporting prostitution fuels organized crime and other forms of trafficking, but the outcome of such challenges is still unclear.

Even if these or other considerations prevent some nations from expressly prohibiting the use of prostitutes, NATO commanders might still be able to place certain areas of the city, or certain establishments, off limits because of criminal conduct that occurs there. TCCs might then be able to punish soldiers who enter those areas for violation of a lawful order. How the new policy statement will be
implemented remains to be determined, but the fact that NATO has issued it will bring additional pressure onto NATO commanders to train and exhort their personnel not to engage in any activity, including patronizing prostitutes, that will facilitate trafficking in persons. Even without the full weight of the criminal law, peer pressure, training, alternative forms of recreation, and moral consequences should do much to reduce the demand for trafficked women that NATO forces might otherwise bring to a country where they serve. Similar steps taken by the United Nations with respect to its peacekeepers should have similar effects.

Conclusion

It is unacceptable that U.N. peacekeepers should abuse their special trust to take advantage of the local population in any way. Given its past history of peacekeeper involvement in sexual abuse abroad, the United Nations must do more than refer the prince’s thorough and comprehensive report to a committee for further study. It must undertake aggressive action to ensure that his recommendations are implemented in all their vigor. Initiatives undertaken by the United States and by NATO involve many of the same measures and should provide further impetus for the United Nations to change. Training programs, a zero-tolerance policy, increased recreational opportunities, hotlines, and heightened sensitivity to the related issues of sexual abuse and human trafficking will do much to bring peacekeeping forces under appropriate control. Rigorously enforced off-limits areas and aggressive patrols of those areas that genuinely divert peacekeepers from the market for prostitutes will also help to reduce the demand for trafficked women. Better evidence-collection procedures, the addition of legal advisors to supervise the investigation of alleged sexual abuses by peacekeepers, and greater emphasis on accountability will increase pressure on individual soldiers to act responsibly while deployed, even while they remain immune to local criminal jurisdiction. With American and NATO troops severely limited from engaging in any conduct that facilitates human trafficking in areas where they deploy, there is hope that the demand for trafficked women will begin to dry up in those areas. There is no reason that U.N. peacekeepers cannot use the same techniques in areas where they deploy.

The de facto immunity that protects peacekeepers from prosecution must also be addressed. In most cases, it is entirely appropriate and serves a valid purpose of protecting visiting forces from local prosecution in favor of discipline by their own nations. But where peacekeepers have committed a serious crime, the TCC cannot or will not prosecute, and the host nation’s courts are capable of doing so, the secretary general should waive the peacekeeper’s immunity in the interests of justice. The real possibility that the secretary general would do so should provide subtle pressure for TCCs to take their own disciplinary responsibilities seriously and will provide added incentive for individual peacekeepers to comply with
local law. Where local courts cannot provide a full and fair trial, the secretary
general cannot waive immunity. In these cases, the emphasis on careful and thor-
ough investigations, proper collection and preservation of forensic and other evi-
dence, investigative guidance from the TCC legal authorities, and pressure from
the United Nations to take real action on accusations may result in some suc-
cessful prosecutions. When this does not happen, the soldier may continue to be
able to avoid any punishment greater than repatriation. Even so, movement in the
right direction gives reason for hope.

It is clearly important that TCCs be willing to continue providing forces to peace-
keeping missions. Exposing them to prosecution in countries where the rule of law is
not well established or where local courts do not have a history of providing full and
fair trials will only dissuade them from making troops available for this very important
service. But reasonable steps to better train troops and to hold them accountable for
crimes they commit should not dissuade TCCs from continuing to participate in peace-
keeping operations. The great majority of peacekeepers were uninvolved in the Congo
scandal, and their conduct has done much to advance the U.N. mission of ensuring
international peace and security. But those who committed these crimes should never
be permitted to take the field under the U.N. flag again. The system under which
peacekeepers are deployed must be amended and improved so that those who rape and
molest in the future will pay a fair penalty established by a fair law.

The examples of USFK and NATO offer hope that an aggressive approach to the
problem of military forces and prostitution can reduce the sexual abuse of local pop-
ulations and the demand for trafficked women and that offenses such as those that
properly outraged the secretary general will become a thing of the past. With a hefty
combination of robust training, real prohibitions, patrols, greater educational and
recreational facilities, and appropriate punishment in cases that warrant it, the United
Nations must find ways to keep its peacekeepers from abusing local populations
again. With the combined efforts and examples of other members of the international
community, there is reason to hope that it will finally be able to do so.

Notes

1. United Nations, General Assembly, Comprehensive Review of the Whole Question of
Peacekeeping Operations in All Their Aspects (Prepared by Prince Zeid Ra’ad Zeid Al-Hussein, U.N.

2. These reports appeared in numerous papers around the world. See, e.g., Maggie Farley, “150
Cases Found in U.N. Sex Abuse Inquiry in Congo,” Los Angeles Times, Home Edition, November 23,

3. Ibid.


5. Ibid., 10.
6. Ibid., 22.

7. See, for example Lynch, “U.N. Sexual Abuse,” note 2. Referring to an earlier “confidential U.N. draft” version of the prince’s report, Lynch wrote, “The report alleges that a Moroccan contingent stationed in Bunia threatened a U.N. informant investigating child prostitution. The Moroccan peacekeepers also ‘spread the word’ that a U.N. child-protection advocate looking into allegations of child prostitution and rape by U.N. peacekeepers ‘had better be careful when she went out at night,’ the report said.” The report cites cases in which peacekeepers from Morocco, Pakistan, and possibly, Tunisia “were reported to have paid or attempted to pay witnesses to change their testimony” regarding alleged sexual abuse. It also charges that Moroccan military officials refused “to provide the names of Moroccan soldiers present at the location of an alleged rape.”


12. Pallen, Sexual Slavery. Derek Chappell, the U.N. police spokesman in Kosovo, disagrees. He reports that interviews with local prostitutes indicated that 70 to 80 percent of clients were locals. While this may be true, the bulk of the profits are from peacekeepers, who have significantly larger amounts of money to spend than locals in a war-torn land; Ibid., 30. See also Ian Traynor, “Westerner Troops Fueling Kosovo Sex Trade,” Irish Times, May 7, 2004.


17. House Committee, The U.N. and the Sex Slave Trade in Bosnia, 68.

trafficking-related misconduct. They could not point to any cases where the U.N. secretary-general had waived immunity, nor could they point to any prosecutions in home countries. In February, the United Nations reported that twelve international police officers in Bosnia were expelled or voluntarily left the country after facing allegations of involvement in trafficking.”


23. See note 21 supra.

24. Prince Al-Hussein referred to this as “an extensive mosaic of provisions drafted at varying points in time and with varying degrees of legal force . . . that apply to the various categories of peacekeeping personnel.” United Nations, Comprehensive Review, 12.

25. Much of the attention is admittedly compelled by the State Department’s Annual Report on Trafficking in Persons, which assesses national efforts to combat trafficking and lists countries on a three-tier scale. “Governments of countries in Tier 3 may be subject to certain sanctions. The U.S. Government may withhold non-humanitarian, non-trade related assistance. Countries that receive no such assistance would be subject to withholding of funding for participation in educational and cultural exchange programs. Consistent with the TVPA, such governments would also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions such as the International Monetary Fund and multilateral development banks such as the World Bank. These potential consequences would take effect at the beginning of the next fiscal year, October 1, 2005.” State Department, Office to Monitor and Combat Trafficking in Persons, 2005 Annual Report on Trafficking in Persons (Washington DC: Government Printing Office, 2005), Introduction, http://www.state.gov/g/tip/rls/tiprpt/2005/46606.htm. Further attention is mandated by the wide acceptance of the United Nations Convention against Transnational Organized Crime (147 signatories) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (117 signatories). See United Nations, Office on Drugs and Crime, Signatories to the UN Convention against Transnational Crime and its Protocols, http://www.unodc.org/unodc/en/tip/crime_cicp_signatures.html (accessed March 6, 2006), for the signature and ratification status of both instruments.


27. Shakespeare, Julius Caesar, Act 4, scene 3.


30. Charter of the United Nations, Article 105, includes the following text: “The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes. Representatives of the Members of the United Nations and officials of the
Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.”


34. Simma, Commentary, 1320-21. In addition to functional immunity, the secretary general and all under- and assistant secretaries general, together with their spouses and children, enjoy diplomatic privileges and immunities.
35. Ibid.
37. Ibid.
38. Ibid.; United Nations, Convention on Immunities, Article VI.
40. United Nations, Model Status of Forces Agreement. The Dayton Accords are widely seen as having provided complete immunity for peacekeepers deployed to the Balkans to implement it; Murray, “Who Will Police the Peace-builders?” 509.
41. See, for example, United Nations, Convention on Immunities, section 20. “Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official 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 United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.” Section 23 applies to experts on mission and provides that “privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.”
43. Ibid., 14-16.
44. Ibid., 27.
45. With forensic evidence of paternity, support obligations might be imposed on peacekeepers who father children whether or not a criminal prosecution succeeds.
46. See text accompanying note 22 supra.
47. United Nations, Comprehensive Review, 16.
48. Ibid., 17.
50. Ibid.
51. See, for example, United Nations, Department of Peacekeeping Operations, General Guidelines for Peacekeeping Operations (New York, 1995).
53. Sarah E. Mendelson, Barracks and Brothels; Peacekeepers and Human Trafficking in the Balkans (Washington, DC: Center for Strategic and Security Studies Press, 2005), 40-42; and William H.


60. E-mail message from Charles M. Johnson, Action Officer, U.S. Forces Korea, Prostitution and Human Trafficking Working Group, dated November 25, 2005, in possession of author.


63. Uniform Code of Military Justice, 10 USC §801 et seq.

64. In Fiscal Year 2004, for example, the armed forces of the United States conducted 7,301 military courts under the Uniform Code of Military Justice: Army (2,084), Navy (1,800), Air Force (1,027), Marines (2,339), and Coast Guard (51). Department of the Navy, Office of the Judge Advocate General, Code 20 Military Justice Statistical Trend Analysis for Fiscal Year 2004, April 28, 2005, in possession of the author.

65. 69 Fed. Reg. 55600, 55603-604. The proposed elements of the offense of patronizing a prostitute are as follows: “(a) That the accused had sexual intercourse with another person not the accused’s spouse; (b) That the accused compelled, induced, enticed, or procured such person to engage in such act of sexual intercourse in exchange for money or other compensation; and (c) That this act was wrongful; and
(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.” A summary of the public comments received through January 11, 2005, is published at 70 Fed. Reg. 1877, January 11, 2005.


68. Mendelson, Barracks and Brothels, 60.


70. Ibid., app. 1, par. 3.

71. Ibid., par. 5 and 6.


73. Ibid., emphasis added. Part of the reason for the ambassador’s vague reply may be that prostitution is legal in a number of European countries, including Germany and the Netherlands. See, for example, Isabelle de Pommereau, “Rethinking the Legal Sex Trade,” Christian Science Monitor, May 11, 2005, 15.


76. The Norwegian Armed Forces Code of Conduct prohibits the purchase of sexual services and relations that might otherwise weaken confidence in the impartiality of the force. Norwegian military personnel who violate the code are subject to punishment. E-mail message from Brita Schawlann, Senior Advisor, Norwegian Defense Ministry, dated January 13, 2006.


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