

# Empty Promises: Peacekeeper Babies and Discretionary Impunity Within the United Nations

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*“What I fear most is power with impunity.”<sup>1</sup>*

*“Where there are sexual contacts between foreign soldiers and local women, whether they are consensual or exploitative/abusive in nature, children are being born.”<sup>2</sup>*

*In six decades of U.N. peacekeeping operations, the presence of U.N. military units in some of the planet's most unstable conflict zones has led to the births of tens of thousands of Peacekeeper Fathered Children (“PKFC”). Mothers of PKFC seeking acknowledgments of paternity or child support payments have been stonewalled by the United Nations; the organization has used its legal immunities to absolve itself of any responsibility to connect abandoned children with their peacekeeper fathers. This inaction has persisted despite external and internal calls for reform and promises by U.N. leadership for new pathways to remedies. This Note sets out the problems and obstacles faced by PKFC mothers when seeking paternity claims and details the ways in which U.N. policies create a remedy gap. It additionally proffers an explanation for that paradox of inaction: the United Nations' automatic categorization of all PKFC as instances of improper Sexual Exploitation and Abuse (“SEA”). The United Nations is temperamentally disposed to zealously exercise its legal immunities as an International Organization (“IO”) to shield itself from civil or criminal claims seeking damages for rape, sexual abuse, or other misdeeds. This Note argues that impulse may be hampering the United Nations' ability to take ownership over civil paternity claims, even as it claims that providing remedies to PKFC and their mothers is a political priority for the organization.*

## INTRODUCTION

In some of the most unstable conflict zones in the world, U.N. peacekeeping forces are deployed to protect civilians and rebuild local institutions. With forces numbering sometimes in the tens of thousands, these contingents consist of military personnel, uniformed police, and civilians,

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1. Isabel Allende, *Tales of Passion*, TED (2007), [https://www.ted.com/talks/isabel-allende\\_tales\\_of\\_passion/](https://www.ted.com/talks/isabel-allende_tales_of_passion/) [<https://perma.cc/RGZ6-V4TW>].

2. Sabine Lee & Susan Bartels, *They Put a Few Coins in Your Hand to Drop a Baby in You': A Study of Peacekeeper-fathered Children in Haiti*, 27 INT'L PEACEKEEPING 177, 181 (2020).

dressed in the signature baby blue of the United Nations. Military personnel making up the peacekeeping units are drawn from the militaries of U.N. member states by contractual provision, and the peacekeeping mandates often last less than a decade. As such, these forces represent an ephemeral alternative to a national military—one that is supposed to be separate from the political leaning of any national group or faction. However, the transient nature of the United Nations' forces (and the nature of the United Nations itself) leads to difficult questions when peacekeeping forces cause harm or commit legally wrongful acts in the host state of their peacekeeping mission. When the members of the peacekeeping contingent have faded back into their national militaries and no longer wear the baby blue, against whom can one bring a claim?

Over the course of decades of U.N. peacekeeping missions, military personnel have fathered tens of thousands of children, known as peacekeeper fathered children ("PKFC") or peacekeeper babies. These children are often subsequently abandoned when peacekeeping contingents are moved or missions are concluded. As a result, mothers of these PKFC face myriad obstacles, including consignment to cycles of poverty as single mothers and ostracization from local communities.

This Note takes up the issue of civil paternity claims against U.N. PKFC—an area where the United Nations has been harshly criticized for failing to provide adequate remedies. Examining first the system of U.N. immunities and then case studies of the obstacles faced by mothers of PKFC, I proffer one explanation for the United Nations' inadequate response. I argue that the United Nations' inaction on this issue stems from a prison of its own making: Because the United Nations classifies all cases of PKFC as instances of Sexual Exploitation and Abuse ("SEA"), any pathways for PKFC mothers to raise paternity claims at the organizational level may, in the mind of the United Nations, be seen as opening up even greater U.N. liability in cases of peacekeeper rape or assault. The United Nations' sense of self-preservation, as it seeks to leverage its legal immunities to protect its ability to carry out its mission, leaves it indisposed to take action it might otherwise be more willing to implement.

This inaction is tragic because the issue of PKFC is a serious one with consequences for the children and their mothers. Finding and securing material support from peacekeeper fathers may make the difference for PKFC mothers between putting food on the table or not. Without the support of an absent peacekeeper father, mothers of children are more likely to engage in dangerous income streams, such as prostitution or begging. But, after peacekeepers have left their mission area, they are difficult for these mothers to contact. In numerous documented cases, and likely scores of undocumented ones, PKFC mothers have sought recourse through local U.N. representatives, requesting contact with their children's fathers, child support payments, or official recognition of paternity.

However, the United Nations holds broad immunities which makes it nearly judgment-proof as a civil or criminal defendant in any case which alleges wrongdoing by a U.N. peacekeeper. The United Nations has used these immunities as a shield and an excuse to stonewall mothers of PKFC, offering either no help at all or hollow platitudes. The United Nations instead maintains that any responsibility lies with the *individuals* culpable. Such a declaration leaves mothers de facto without recourse, as structural barriers to access and information leave their claims with negligible chances of success if undertaken without the United Nations' aid.

This Note proceeds in three parts. Part I provides background on the United Nations' system of immunities and the legal safeguards that govern the deployment of U.N. peacekeeping contingents. Part II sets out the ways in which U.N. agencies and leaders have promised to make internal reforms on the issue of SEA and peacekeeper paternity claims. Part III takes up the issue of "Peacekeeper Babies," first setting out the nature of the problem of PKFC in past U.N. missions and explaining the use of the U.N. language on SEA as the umbrella under which all PKFC instances fall. It then examines the situations of mothers of PKFC in two missions, Haiti and the Democratic Republic of the Congo ("DRC"), where the numbers of peacekeeper babies were significant, and shows the difficulties confronting mothers who attempt to raise paternity claims and the ways that the United Nations created a remedy gap. Part IV argues that the problems of PKFC and their mothers are ones which the United Nations *could*, within the discretion of its legal immunity, easily undertake to solve through compensation, coordination, and indemnification—remedies which it may owe these women under international human rights principles of remedies. I ultimately conclude that the United Nations' failure to do so belies deeper flaws in the organization's model and internal politics. Under the U.N. system, *all* instances of PKFC are classified as cases of SEA (even if evidence does not point to an exploitative relationship). The United Nations' wholesale reluctance to open itself up to legal liability and its conflation of PKFC claims with SEA allegations make the issue of combating civil paternity claims incompatible with the United Nations' modus operandi.

## I. BACKGROUND

The United Nations' mandate holds the organization up as a protector of peace and stability throughout the world, but some of the organization's past missions tell a very different story. The United Nations has been accused of multiple bad acts carried out by its forces and employees in the course of their work—from persistent claims of sexual abuse and assault by

U.N. peacekeepers<sup>3</sup> to mass torts, such as causing a cholera outbreak in Haiti<sup>4</sup> and alleged failures to prevent mass death in Srebrenica<sup>5</sup> and Rwanda.<sup>6</sup> Compounding the frustration over these events is the fact that the United Nations is, by its nature as the world's preeminent international organization ("IO"), almost entirely immune from prosecution in any court or jurisdiction.<sup>7</sup> Because of this shield from legal action, victims of U.N. misdeeds must rely on U.N. leadership's discretion to change internal policy, take accountability, mete out reparations, and allow themselves to be judged by internal or external arbiters.

### A. U.N. Immunity

As an IO, the United Nations possesses de facto "absolute immunity" from "every form of legal process" on the world stage.<sup>8</sup> This "immunity acquis" developed at the beginning of the United Nations in the 1940s and has remained essentially unchanged ever since.<sup>9</sup>

Justifications for U.N. immunity often rest in functionalism. Proponents argue that IOs in general—as entities on the world stage working "towards the common good"—necessitate some degree of immunity.<sup>10</sup> This necessity is compounded in the case of the United Nations, the world's largest IO.<sup>11</sup> Because the United Nations works in every corner of the world, it needs shielding to "prevent member states from interfering in the organization's

3. E.g., RÓISÍN SARAH BURKE, *SEXUAL EXPLOITATION AND ABUSE BY UN MILITARY CONTINGENTS* 1–3 (Christopher Greenwood & Timothy L.H. McCormack eds., 2014); CASSANDRA MUDGWAY, *SEXUAL EXPLOITATION AND ABUSE BY UN PEACEKEEPERS* 1–2 (Routledge ed., 1st ed. 2019); Marion Momponent, *La Responsabilité Civile de l'Organisation des Nations Unies. Effectivité et Efficacité des Mécanismes de Réparation Offerts pour les Personnes Privées : Le Cas des Exactions Sexuelles Commises par les Casques Bleus*, 30 QUEBEC J. INT'L L. 41 (2017); Elizabeth F. Defeis, *Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity*, 7 WASH. U. GLOB. STUD. L. REV. 185 (2008).

4. See Beatrice Lindstrom, *When Immunity Becomes Impunity: Rethinking Liabilities for UN Harms*, 24 J. INT'L PEACEKEEPING 164 (2020); Renee A. Vezina, *Combating Impunity in Haiti: Why the ICC Should Prosecute Sexual Abuse by UN Peacekeepers*, 1 AVE MARIA INT'L L.J. 431 (2012).

5. See ADAM LEBOR, "COMPLICITY WITH EVIL": THE UNITED NATIONS IN THE AGE OF MODERN GENOCIDE 23–43 (2006); Kristen Boon, *The State of the Netherlands v. Respondents & Stichting Mothers of Srebrenica*. No. 17/04567, 114 AM. J. INT'L L. 479 (2020); Jasna Hasanbasic, Comment, *Liability in Peacekeeping Missions: A Civil Cause of Action for the Mothers of Srebrenica Against the Dutch Government and the United Nations*, 29 EMORY INT'L L. REV. 415, 416 (2014); Leman Canturk, *Anatomy of a Peacekeeping Mission: Srebrenica Revisited*, WORLD PRESS (Oct. 25, 2007), <https://www.worldpress.org/Europe/2975.cfm> [<https://perma.cc/A5SL-GENH>].

6. See LEBOR, *supra* note 5, at 136–57; Jim McLay, *Tracing Our UN Footsteps*, 36 NEW ZEALAND INT'L REV. 13, 13–14 (2011).

7. See Kristen E. Boon, *Immunities of the United Nation and Specialized Agencies*, in THE CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW 201, 203 (Tom Ruys et al. eds., 2019).

8. Professor Kristen Boon has criticized absolute immunity as counterintuitive and unnecessary for the functional purposes of the United Nations. Kristen E. Boon, *The United Nations as Good Samaritan: Immunity and Responsibility*, 16 CHI. J. INT'L L. 341, 345–46 (2016).

9. Boon, *supra* note 7, at 201.

10. Jan Klabbers, *The EJIL Foreword: The Transformation of International Organizations Law*, 26 EUR. J. INT'L L. 9, 11 (2015).

11. See *id.*

functions.”<sup>12</sup> The United Nations might otherwise be subject to claims brought in every recognized national jurisdiction as well as in a plethora of subnational entities or autonomous territories. Scholars argue that, without immunity, the United Nations would risk prejudice and bad faith in local courts, and subject itself to “baseless actions brought for improper motives.”<sup>13</sup> Efficiency is another justification: Without blanket immunities, the United Nations would be forced to exert energy and resources on compliance and legal research on the varying jurisdictions and laws of every country in which it works.<sup>14</sup> Additionally, the United Nations may not wish for the court systems of varying countries to propagate opinions on the legal effects of the U.N. Charter and constituent documents, which may be interpreted in myriad ways in different jurisdictions and lead to general confusion.<sup>15</sup>

The effect of this immunity is that it is exceedingly difficult for the United Nations itself to be brought before any court, domestic or international, on criminal or civil charges.<sup>16</sup> Claimants can use internal dispute resolution mechanisms for individual torts,<sup>17</sup> but the system is opaque, often leaving victims with no insight into the deliberation process, no information about why their claims were denied, and no recourse to appeal to any other body.<sup>18</sup>

Some scholars have argued that the system of U.N. immunities “reflect[s] outdated theories” of international law and is fundamentally unsuited to modern U.N. functions.<sup>19</sup> The prevalence of claims of U.N. wrongdoing in the twenty-first century and more nuanced views of the roles of IOs are leading to calls for a system in which the United Nations and its employees are no longer protected from all legal scrutiny.<sup>20</sup> Professor Jan Klabbers has argued that a functionalist defense of IO immunity does not and cannot distinguish between negligent, tortious, or even morally bankrupt behavior by the United Nations on missions around the globe.<sup>21</sup> Rather, such functionalism assumes that any behavior, no matter how despicable, should be shielded in order to also shield the general functions of the United Nations’

12. *Id.* at 14.

13. Niels Blokker, *Jurisdictional Immunities of International Organisations – Origins, Fundamentals and Challenges*, in *THE CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW* 185, 197 (Tom Ruys et al., eds. 2019).

14. See Rosa Freedman & Nicolas Lemay-Hébert, *Between a Rock and a Hard Place – Immunities of the United Nations and Human Rights*, in *THE CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW* 579, 580–81 (Tom Ruys et al., eds. 2019).

15. Blokker, *supra* note 13, at 197.

16. *See id.* at 201–03.

17. See Yannick Radi, *La Réforme du Système de Justice Interne de l’Organisation des Nations Unies*, 126 *REVUE FRANÇAISE D’ADMINISTRATION PUBLIQUE* 307, 307–09 (2008).

18. See NIAMH KINCHIN, *ADMINISTRATIVE JUSTICE IN THE UN: PROCEDURAL PROTECTIONS, GAPS AND PROPOSALS FOR REFORM* 79, 97–103 (2018).

19. Freedman & Lemay-Hébert, *supra* note 14, at 579; see Klabbers, *supra* note 10, at 75.

20. See Blokker, *supra* note 13, at 198.

21. Klabbers, *supra* note 10, at 76–77.

peace and security work.<sup>22</sup> These critiques have led some to argue that a coalition of experts, perhaps centered around the International Law Commission (“ILC”), should propagate articles on the immunity of IOs which clarify or amend the existing rules and allow for greater latitude of challenges brought against IOs.<sup>23</sup> As of yet, however, the United Nations’ immunity remains unchallenged and attempts to secure judgments against the United Nations in national courts have been unsuccessful.<sup>24</sup>

### B. Peacekeeper Immunities

U.N. peacekeeping missions (also referred to as U.N. Military Contingents, or “UMCs”) are one of the most recognizable arms of U.N. operations. Soldiers, wearing the signature baby blue helmets of the United Nations, are sent to some of the most unstable conflict areas in the globe. UMCs are dispatched by virtue of a Security Council resolution (often with the consent of the hosting states). Since U.N. peacekeeping began in 1948, over one million people have served in a total of seventy-two peacekeeping operations, from Haiti to Cyprus to Jammu and Kashmir.<sup>25</sup>

Within the United Nations, peacekeeping contingents enjoy special legal protection and immunities as a specialized organ of the IO.<sup>26</sup> U.N. peacekeeping contingents are composed of active-duty military deployments from a home country referred to in U.N. parlance as the “sending state” or the “troop contributing country” (“TCC”).<sup>27</sup> Contractual agreements with the host state (the state where the peacekeeping mission works) and the TCC (the state from which the peacekeepers hail) govern U.N. military missions. Two main documents govern the immunities and presence of a UMC deployment in the host country: The first is the U.N. Status of Forces Agreement (“SOFA”), a “bilateral agreement regulating the relationship between the host state and the U.N.,” including permission to host soldiers in host state territory and immunities from certain local laws.<sup>28</sup> The second is a Memorandum of Understanding (“MOU”), between the TCC and the

22. *Id.*

23. Blokker, *supra* note 13, at 199.

24. *E.g.*, *Georges v. United Nations*, 834 F.3d 88, 98 (2d Cir. 2016); *Brzak v. United Nations*, 597 F.3d 107, 108 (2d Cir. 2010); *Mothers of Srebrenica v. The State of the Netherlands*, Supreme Court of the Netherlands, 10/04437 (Apr. 13, 2012). For a survey of relevant cases, see generally Lindstrom, *supra* note 4; Bruce Rashkow, *Above the Law: Innovating Legal Responses to Build a More Accountable U.N.: Where is the U.N. Now*, 23 ILSA J. INT’L & COMPAR. L. 345 (2017).

25. *Historical Timeline of U.N. Peacekeeping*, UN PEACEKEEPING, <https://peacekeeping.un.org/en/historical-timeline-of-un-peacekeeping> [https://perma.cc/9TM9-CWBY].

26. Aurel Sari, *The Immunities of Visiting Force*, in *THE CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW* 559, 571 (Tom Ruys et al., eds. 2019).

27. Members of a UMC may have additional privileges or immunities depending on their status. On any given U.N. peacekeeping operation, there are several categories of personnel, outside of the peacekeeping soldiers. These include the Special Representative of the Secretary-General (SRSG), the highest-ranking member of the mission, the Force Commander, lower-ranked U.N. officials, U.N. experts, local staff, and U.N. volunteers. BURKE, *supra* note 3, at 65.

28. *Id.* at 64. For more on the historical developments of SOFAs, see Sari, *supra* note 26, at 564–70.

United Nations, which governs the employer-employee relationship and military command structure within the UMC.<sup>29</sup> As such, individual soldiers within UMCs are not directly employed by the United Nations; they remain under military control of their home armed forces, which have entered into a bilateral agreement with the United Nations.<sup>30</sup> Combined with the background regime of IO immunity, the effects of the SOFA and MOU create a legal landscape wherein members of UMCs are shielded from almost all forms of civil liability while deployed on peacekeeping missions.

### 1. *Barriers to Criminal Liability*

The United Nations' model SOFA, first introduced in 1990, serves as a blueprint for peacekeeping agreements, and provides for broad criminal immunities for UMC members.<sup>31</sup> U.N. SOFAs invariably stipulate that members of the peacekeeping contingent are subject to the exclusive criminal jurisdiction of the TCC and are thereby not subject to the jurisdiction of the host state.<sup>32</sup> This is regardless of whether the potentially criminal act was carried out in the course of the peacekeeper's mission duties.<sup>33</sup> This clause gifts members of the UMC a level of immunity above and beyond comparable legal documents governing foreign troop deployments.<sup>34</sup>

Justifications for the broad criminal immunity granted in U.N. SOFAs normally depend on the dangerous security climate inherent in the deployment of a UMC. Peacekeeping operations take place in "insecure and otherwise challenging operational environments,"<sup>35</sup> where local governmental and law enforcement systems may have broken down. Thus, TCC commanders may not trust the legal system of the host state and may not want to subject their soldiers to foreign criminal proceedings.

In theory, U.N. peacekeepers remain subject to the criminal jurisdiction of their home state during the time of their service in UMC missions. The model SOFA requires the United Nations to ask the TCC for assurances that the TCC will proactively proceed with such prosecutions against military members.<sup>36</sup> The United Nations' model MOU likewise vests the TCC with legally binding responsibilities to investigate and hold alleged perpetrators criminally accountable for crimes committed on missions, including SEA.<sup>37</sup>

29. MUDGWAY, *supra* note 3, at 28.

30. Freedman & Lemay-Hébert, *supra* note 14, at 583.

31. U.N. Secretary-General, *Model Statute-of-forces Agreement for Peace-keeping Operations*, U.N. Doc. A/45/594 (Oct. 9, 1990) [hereinafter *U.N. Model SOFA*].

32. BURKE, *supra* note 3, at 65; Sari, *supra* note 26, at 571–72.

33. See Sari, *supra* note 26, at 571–72.

34. For example, the NATO Model SOFA only protects NATO soldiers from criminal jurisdiction in the host state for actions which arise out of acts "done in the performance of official duty." *Id.* at 569–70.

35. *Id.* at 576.

36. MUDGWAY, *supra* note 3, at 30.

37. *Id.* at 28. This robust requirement to bring accountability to SEA perpetrators was added to an updated version of the United Nations' model MOU, released in 2007 during attempted reforms within the United Nations to combat SEA.

But practically, this system of TCC criminal jurisdiction often fails. Scholars have remarked that “troops frequently are not held accountable by their own countries.”<sup>38</sup> This failure to prosecute is due to overlapping logistical and political factors. With cross-border prosecutions, investigations are more difficult almost by default: Victims are farther afield, and potentially untrusting of foreign officials or unfamiliar with local languages.<sup>39</sup> Capacity for investigations and fact-gathering is strained, particularly if victims or witnesses are required to appear in TCC courts, requiring international travel. TCCs may not have extraterritorial provisions in their criminal laws, which are necessary to hold perpetrators of overseas acts accountable domestically, even when part of a UMC.<sup>40</sup> Prosecuting soldiers for acts committed on missions may also be politically inexpedient for the TCC, as governments may face “domestic pressure not to prosecute troops.”<sup>41</sup> And U.N. leadership may be disincentivized to push the TCC to initiate politically unpopular prosecutions, lest they risk fewer troop contributions to UMCs in the future.<sup>42</sup>

The fact that criminal prosecution is limited to the sending state’s jurisdiction likewise means that peacekeepers are not subject to crimes which exist in the host state’s, but not the TCC’s, jurisdiction. Although U.N. SOFAs require UMC members to obey all local laws of the host country (whether or not the conduct is illegal in the TCC), scholars have concluded that, practically speaking, these provisions hold little weight.<sup>43</sup> Crucially, the TCCs themselves are not parties to SOFAs, and so are not legally bound by their terms.<sup>44</sup> As Professor Róisín Burke writes, “local law can have little practical effect unless a corresponding provision exists in TCC law.”<sup>45</sup>

The regime of criminal immunity created by SOFAs and MOUs is only amplified in the sensitive circumstances of sexual crimes. In cases of criminal allegations related to SEA, victims may be more likely to be underprivileged, compounding the difficulties of investigator access and evidence collection from abroad. MOUs for some peacekeeping missions, particularly those instituted prior to the UN updating its model MOU in 2007, did not specify that SEA allegations must also be investigated by TCCs.<sup>46</sup> Military

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38. Freedman & Lemay-Hébert, *supra* note 14, at 583.

39. *Id.* at 583–84.

40. *Id.*

41. *Id.* at 592–93.

42. *Id.* at 584. At least in theory, the requirements to prosecute described in this paragraph are enshrined in the legally binding MOU between the United Nations and the TCC, and the United Nations could institute dispute resolution proceedings against the TCC for failing to abide by the MOU’s terms. But, given that the United Nations relies on the cooperation of TCCs to staff peacekeeping missions, the organization may be reluctant to do so.

43. BURKE, *supra* note 3, at 66.

44. *See id.*

45. *Id.*

46. *See* Muna Ndulo, *The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers During Peacekeeping Missions*, 27 BERKELEY J. INT’L L. 127 (2009). While this requirement has been entrenched in more recent Security Council authorizations of peacekeeping mandates as a bind-



commanders may also be less likely to prosecute their soldiers for SEA allegations, due to cultures of machismo and impunity within the ranks or in the societies from which they come.<sup>47</sup> Though the fallback protection of the guarantees asked for by SOFAs are technically always in place and should theoretically apply to SEA allegations, scholars have found that the United Nations often “[did] not press for [those assurances]” when relating to sexual crimes.<sup>48</sup> Overall, the broad protections which the SOFA grant to UMC members while in the territory of the host state, combined with the TCC’s usual inability or unwillingness to pursue prosecution of its own nationals, creates a *de facto* immunity for even serious offenses created by UMC members while on mission.

## 2. *Civil Liability*

U.N. SOFAs also provide a certain degree of immunity for civil charges in the host state. In the civil case, as opposed to the criminal, the legal regime makes a bright-line distinction between those actions committed during the course of their official functions and those which are unrelated to the peacekeepers’ mandate.<sup>49</sup> Peacekeepers are shielded from civil prosecution for actions within their official capacity, but not for acts which do not implicate the core mission of the UMC deployment.<sup>50</sup> The standard used to determine whether peacekeeping forces are acting within their official capacity is that of “effective control,” as set out in Article 7 of the ILC’s Draft Articles on Responsibility of International Organizations.<sup>51</sup> The “effective control” standard was described by the International Court of Justice (“ICJ”) in *Nicaragua v. United States*,<sup>52</sup> which held that the United States was not responsible for acts by Nicaraguan Contras because the United States did not

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ing requirement, the custom nevertheless affected the mission conditions in the case studies discussed *infra* and affected potentially thousands of individuals in their interactions with peacekeepers.

47. See generally Alexandra R. Harrington, *Prostituting Peace: The Impact of Sending State’s Legal Regimes on UN Peacekeeper Behavior and Suggestions to Protect the Populations Peacekeepers Guard*, 17 J. TRANSNAT’L L. & POL’Y 217 (2018).

48. Ndulo, *supra* note 46, at 154–55.

49. KELLY NEUDORFER, SEXUAL EXPLOITATION AND ABUSE IN UN PEACEKEEPING 13 (2015).

50. *Id.*

51. Int’l. L. Comm’n, Rep. on the Work of Its Sixty-Third Session, U.N. Doc. A/66/10, art. 7 (2011) [hereinafter Draft Articles on Responsibility of International Organizations] (“The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct . . .”).

52. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14 (June 27) [hereinafter Nicaragua]. While the Nicaragua opinion dealt with the question of the responsibility of a *state* rather than an IO, the standard has been adopted by further cases in the European Court of Human Rights (“ECHR”) and others dealing with organizational responsibility. See Tom Dannenbaum, *Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should Be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers*, 51 HARV. INT’L L.J. 113 (2010); see also Kristen E. Boon, *Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines*, 15 MELB. J. INT’L L. 329 (2014).

“direct[ ] or enforce[ ] the perpetration of [those] acts.”<sup>53</sup> Thus, an “official act” which is covered by civil immunities must not only be one which is undertaken at the UMC member’s place of work or during working hours—it must also be an act which that soldier was directed or assigned to undertake as consistent with their mission duties.<sup>54</sup>

This civil immunity, by definition, allows the United Nations as an IO to exculpate itself of all legal responsibility in cases of peacekeeper SEA or paternity claims. The United Nations classifies all claims related to SEA, including paternity claims, as falling outside the “official duties” of the peacekeeper. Given the predominant “effective control” standard, this is a logical restriction: A U.N. mission commander would never instruct UMC forces to engage in sexual contact as part of their mandated mission duties.<sup>55</sup> And the justifications for such a policy are evident: Were the United Nations to admit liability in cases of SEA, it could be flooded with thousands of civil claims seeking damages in cases of rape or sexual assault, which risk prohibitive expenses of capital and manpower.<sup>56</sup>

However, this U.N. immunity in the case of paternity claims *in particular* creates an atmosphere in which women are denied remedies almost de facto. Attempts to secure paternity payments are by nature always civil claims (as opposed to criminal claims for sexual assault), and recourse to local authorities will provide no possible law enforcement action. Appeals to authorities in the peacekeeper’s home country to instigate an investigation will also likely lead to inaction. And turns to the institution which a PKFC mother identifies most with the father of her child—the local U.N. office—will likely lead to no action, as U.N. officers will claim immunities for the “unofficial” actions of the peacekeeper father.<sup>57</sup>

The restrictive nature of the “effective control” standard presents two barriers to effective remedy and justice. First, as discussed in greater detail *infra*, victims of offenses are effectively unable to bring civil claims against either individual peacekeepers or the United Nations as an organization.

53. Nicaragua, *supra* note 52, ¶ 115. Professor Tom Dannenbaum argues that this standard is totally unfitting to the ad hoc nature of current U.N. peacekeeping structure, where much of the operational control rests in non-centralized networks of field commanders from the TCC as opposed to in a centralized U.N. field command or mandate. See Dannenbaum, *supra* note 52, at 144–46.

54. Such a standard necessarily excludes all forms of SEA. See NEUDORFER, *supra* note 49, at 31.

55. The United Nations can, by discretion, make a determination that it wishes to take ownership of the actions of a peacekeeper even outside of the peacekeeper’s “official duties,” and thereby allow itself to be named as a defendant in a civil suit. But, in practice, the United Nations does not make such determinations. Sari, *supra* note 26, at 572.

56. A barrage of litigation of this type would also parallel the risks of myriad jurisdictions, legal standards, and possibly damaging precedent elucidated above in the case of criminal claims.

57. In fact, the U.N. officials may do more than simply not act; they may take steps that slow down any mother’s legal claims. A claimant wishing to make a civil claim against a U.N. peacekeeper must notify the U.N. mission force commander, who will then make an initial determination of the nature of the underlying actions and their relation to peacekeeper duties. The individual claim “must be discontinued if the [U.N. commander] certifies that [the charges] relate to official duties.” Sari, *supra* note 26, at 572.

While the United Nations may retain a presence in a local area, individual peacekeepers move frequently among posts in-country and details intra-country. As such, while the *United Nations* remains approachable, *individual peacekeepers* are often realistically beyond the reach of prospective plaintiffs once they leave the host state. This presents an ironic dynamic: The entity that is immovably present and available for claims (the organization) is immune from legal liability, while the sole target for judiciable claims (the individual) is ephemeral and unreachable.

Second, this legal regime also grants the United Nations near-total impunity for wrongful acts committed by peacekeepers outside of their “official duties”—even if the United Nations maintains significant control over that behavior. For instance, the United Nations often controls the discipline and culture of forces in a given mission area and could have contributed to the background circumstances which enabled or led to that civil offense. While a coalition of women and girls who were victimized by peacekeepers working at a camp under the United Nations’ directive might assume that criminal or civil liability would lie with the organization sponsoring and coordinating the military presence, they would in fact be barred from bringing the United Nations before any local or international court or before any adjudicatory mechanism of the United Nations itself. While complete liability for the United Nations may not be the desirable result in all cases, the fact that there is zero chance of *any* liability passing to the IO results in undesirable situations, where the United Nations could foster cultures of negligence and persistent bad acts among peacekeeping forces without being motivated by liability to take preventative measures.

### 3. *Internal Dispute Mechanisms*

With avenues to both criminal and civil liability in national courts blocked, a potential claimant who has been harmed by a UMC member has one remaining forum in which she can be heard: the United Nations’ own internal dispute resolution mechanisms. These bodies exist to hear those claims which the United Nations (according to its own internal policies, external law, or simply moral sense) deems judiciable and within the scope of its operational control. The U.N. Model SOFA specifies that, as a catch-all, any private law claim “over which the courts of the [host country] do not have jurisdiction . . . shall be settled by a standing claims commission to be established for that purpose.”<sup>58</sup>

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58. U.N. Model SOFA, *supra* note 31, ¶ 51 (first alteration in original). Coupled with the restriction that the host state does not have any jurisdiction over civil offenses committed within the range of a peacekeeper’s duties, this necessarily means that those crimes submitted to the U.N. Claims Commission are those which include the responsibility of a peacekeeper while performing official acts.

But in practice, “a standing claims commission has never been established within a U.N. peacekeeping operation,”<sup>59</sup> and matters are instead referred to other arms of the United Nations for internal dispute settlements without representation from the host state.<sup>60</sup> Professor Tom Dannenbaum argues that these dispute settlement organs are “grossly inadequate” and the United Nations’ control over every stage of the procedure “is incompatible with a fair process.”<sup>61</sup> Moreover, the fact that claims against the United Nations are restricted to “private law” claims precludes any damages for pain and suffering, even when some argue those factors must be included under core tenets of international human rights law.<sup>62</sup>

Dannenbaum, among others, has argued that the system of immunities in place at the United Nations fundamentally denies the victims of peacekeeper abuse the effective remedies which exist as general principles of human rights law and theory.<sup>63</sup> For crimes which occur outside the umbrella of “on-duty” offenses, such as SEA offenses, this remedy gap is even starker. In fact, an Associated Press investigation found that victims of car accidents involving U.N. vehicles are “more likely to receive compensation than victims of rape” because of the “official duties” requirement.<sup>64</sup>

Scholars and civil society groups have advocated for changes to the U.N. Model SOFA, pointing to this remedy gap to argue that it is outdated.<sup>65</sup> While mission-specific SOFAs could theoretically address these deficiencies, many peacekeeping operations rely heavily on the model SOFA as a template.<sup>66</sup> Moreover, the U.N. Model SOFA is assumed to be in force until a mission-specific SOFA is finalized, which can take months after the initiation of a peacekeeping mission, if it is ever finalized.<sup>67</sup> This means, according to some scholars, that the U.N. Model SOFA is ill-equipped to provide accountability for those potentially affected by the peacekeeping contingent,

59. UN PEACEKEEPING L. REFORM PROJ., UNIV. ESSEX SCH. L., UN PEACEKEEPING AND THE MODEL STATUS OF FORCES AGREEMENT ¶ 181 (2010).

60. Dannenbaum, *supra* note 52, at 126.

61. *Id.*

62. See UN PEACEKEEPING AND THE MODEL STATUS OF FORCES AGREEMENT, *supra* note 59, ¶¶ 180–183. The United Nations’ definition of private law claims has also been inconsistent, as when, in the Haiti cholera case, it argued that claims brought for damages due to death and disease were not “private law” claims but instead “related to ‘political and policy matters.’” Freedman & Lemay-Hébert, *supra* note 14, at 590.

63. Dannenbaum, *supra* note 52, at 120–21.

64. Krista Larson & Paisley Dodds, *UN Peacekeepers in Congo Hold Record for Rape, Sex Abuse*, ASSOC. PRESS (Sept. 23, 2017), <https://apnews.com/article/united-nations-pakistan-africa-sexual-abuse-international-news-69e56ab46cab400f9f4b3753bd79c930> [<https://perma.cc/E27H-JUTE>].

65. See, e.g., UN PEACEKEEPING AND THE MODEL STATUS OF FORCES AGREEMENT, *supra* note 59.

66. See *Reviewing the 1990 United Nations Model Statute of Forces Agreement*, INT’L PEACE INST. (Feb. 25, 2011), <https://www.ipinst.org/2011/02/reviewing-the-1990-united-nations-model-status-of-forces-agreement> [<https://perma.cc/5RP9-HZAU>].

67. See UN PEACEKEEPING AND THE MODEL STATUS OF FORCES AGREEMENT, *supra* note 59, at 2; *Reviewing the 1990 United Nations Model Statute of Forces Agreement*, *supra* note 66.

which “can have a significant impact on the reputation of the mission and its relationship of trust with the local population.”<sup>68</sup>

These factors result in an atmosphere where the United Nations has, through its web of international legal immunities, managed to absolve itself of essentially all obligatory responsibility for the conduct of its forces which, on its mission, wear the instantly recognizable powder-blue helmets and insignia of the United Nations.

## II. PERPETUAL MOTION MACHINE OF NON-ACCOUNTABILITY

Accusations that U.N. immunities and its internal dispute resolution mechanisms provide inadequate remedies for victims are not new. The United Nations’ critics, including civil society activists who represent victims, have been agitating for decades against U.N. impunity. High-profile cases including the Haiti cholera epidemic, the Srebrenica massacre, lead poisoning at a U.N. camp in Kosovo,<sup>69</sup> and the trafficking of women in Kosovo by U.N. forces,<sup>70</sup> have sparked outrage in the press and triggered calls for reform.

Administrations within the United Nations have recently tried to take a more forthright approach to liability. In recent years, the United Nations has made strides by taking responsibility for some of the most flagrant misdeeds, such as the U.N. peacekeepers’ role in the spread of cholera in Haiti.<sup>71</sup> The United Nations has also established a dedicated fund to provide reparations for SEA.<sup>72</sup> And Secretary-General Antonio Guterres, who began his tenure at the helm of the United Nations in 2017, declared his intention to make meaningful change from the outset.<sup>73</sup>

The United Nations has also made efforts to take the perspectives of victims into account on the thorny issue of sexual assault by U.N. forces. Compared to his predecessors, Guterres has taken a much stronger stance on the

68. UN PEACEKEEPING AND THE MODEL STATUS OF FORCES AGREEMENT, *supra* note 59, ¶ 183.

69. See Katharina Rall, *Kosovo Lead Poisoning Victims Still Awaiting Justice*, HUM. RTS. WATCH (Sept. 21, 2020, 2:56 PM), <https://www.hrw.org/news/2020/09/21/kosovo-lead-poisoning-victims-still-awaiting-justice#> [https://perma.cc/M527-5VKP].

70. See generally HUM. RTS. WATCH, *HOPES BETRAYED: TRAFFICKING OF WOMEN AND GIRLS TO POST-CONFLICT BOSNIA AND HERZEGOVINA FOR FORCED PROSTITUTION* (2002); VICTOR MALAREK, *THE NATASHAS: INSIDE THE NEW GLOBAL SEX TRADE 184–94* (2003).

71. Jonathan M. Katz, *UN Admits Role in Cholera Epidemic in Haiti*, N.Y. TIMES (Aug. 17, 2016), <https://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html#:~:text=For%20the%20first%20time%20since,significant%20new%20set%20U.N.> [https://perma.cc/8Z8M-LWAX].

72. UNITED NATIONS, *THIRD ANNUAL REPORT OF THE TRUST FUND IN SUPPORT OF VICTIMS OF SEXUAL EXPLOITATION AND ABUSE* (2020), <https://www.un.org/en/content/psea-trust-fund-report-2021/assets/pdf/Report%20of%20the%20Trust%20Fund%20in%20Support%20of%20Victims%20of%20Sexual%20Exploitation.pdf> [https://perma.cc/6T86-ZHKJ].

73. See U.N. Secretary-General, *Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach*, § III, U.N. Doc. A/71/818 (2017) [hereinafter 2017 Special Measures Report].

issue, promising to “[p]ut [ ] the rights and dignity of victims first.”<sup>74</sup> The cornerstone of this promise was the appointment of Jane Connors as the United Nations’ first Victim’s Rights Advocate (“VRA”).<sup>75</sup> The VRA’s mandate is twofold: She works both within the U.N. system to “ensure that every victim receives appropriate personal care” as their case progresses and also with outside organizations and governments to “build networks of support and to assist in ensuring that the full effect of local laws, including remedies for victims, are brought to bear.”<sup>76</sup>

In particular, allegations of misconduct and SEA by U.N. deployments have generated enormous amounts of attention and disgust in the media and among U.N. member states, spurring continuous calls for reform.<sup>77</sup> While the United Nations made efforts as early as the 1990s to shift the norms of peacekeeping missions, particularly around allegations of SEA, the institutional response has been “reactive.”<sup>78</sup> The United Nations is motivated to pursue reform only in moments of the greatest public pressure, “often following significant allegations of [wrongdoing] exposed by world media or international NGOs.”<sup>79</sup> But when international scrutiny fades, the United Nations likewise loses its drive to make changes, and abandons its initiatives. Taking the problem of SEA as an exemplary case, this Section sketches out the attempts made to combat sexual abuse in peacekeeping missions before concluding that they have ultimately failed.

The issue of U.N. peacekeeper sexual abuse first came under scrutiny in the 1990s, when news reports surfaced of a large number of sexual misconduct allegations stemming from U.N. presence in Cambodia.<sup>80</sup> The United Nations’ initial reaction left much to be desired: The U.N. Special Representative to Cambodia infamously defended peacekeeper sexual behavior with the dismissive “boys will be boys.”<sup>81</sup>

In the following years, allegations of peacekeeper misconduct proliferated, implicating U.N. presence not only in Cambodia but in conflict theaters across the globe.<sup>82</sup> The first example of a coordinated U.N. response to such allegations occurred in the early 2000s, after the media reported on cases of sexual assault in Guinea, Liberia, and Sierra Leone.<sup>83</sup> The U.N. Office of

74. *Id.*

75. *Id.* ¶ 27; *Victim’s Rights Advocate*, UNITED NATIONS, <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/victims-rights-advocate> [<https://perma.cc/X6JV-LJYE>] (last visited Sept. 24, 2022). The VRA sits within the Secretary General’s office at the Assistant Secretary-General level.

76. 2017 Special Measures Report, *supra* note 73, ¶¶ 28–29.

77. *E.g.*, Sanam Naraghi Anderlini, *UN Peacekeepers’ Sexual Assault Problem: How to End It Once and for All*, FOREIGN AFFS. (June 9, 2017), <https://www.foreignaffairs.com/articles/world/2017-06-09/un-peacekeepers-sexual-assault-problem> [<https://perma.cc/BXW9-2K23>].

78. MUDGWAY, *supra* note 3, at 4.

79. *Id.*

80. NEUDORFER, *supra* note 49, at 1.

81. *Id.*

82. *Id.* at 1–2.

83. See U.N. HUM. RTS. COMM. & SAVE THE CHILDREN – U.K., *SEXUAL VIOLENCE & EXPLOITATION: THE EXPERIENCE OF REFUGEE CHILDREN IN GUINEA, LIBERIA, AND SIERRA LEONE* (2002),

Internal Oversight Services (“OIOS”) conducted an investigation in 2002, but “was not able to substantiate” the claims.<sup>84</sup> Nevertheless, reports continued to surface throughout the early 2000s of egregious instances of abuse on the sidelines of peacekeeping missions.<sup>85</sup>

This dynamic led to U.N. reforms designed to quantify and address the issue of sexual misconduct. These included Security Council resolutions enshrining respect for women in combat zones, appointing an advisor to the Secretary-General on SEA, and committing to collect data about instances of peacekeeper sexual misconduct.<sup>86</sup> The United Nations also established the Inter-Agency Standing Committee (“IASC”) in 2002, tasked with “develop[ing] specific measures to counter sexual exploitation and provid[ing] definitions of SEA.”<sup>87</sup>

Following a 2004 report on sexual misconduct among peacekeepers in the Democratic Republic of the Congo, the U.N. General Assembly passed a resolution to create a strategy to eliminate SEA in peacekeeping operations.<sup>88</sup> As an effect of that resolution, then-Secretary-General Kofi Annan appointed Prince Zeid Ra’ad Zeid al-Hussein as an expert to create a comprehensive report on SEA within the United Nations, including its causes and effects on implicated communities.<sup>89</sup>

The ensuing document, the Zeid Report, confirmed the wide-ranging nature of SEA accusations against U.N. peacekeepers, and substantiated several claims of previously reported SEA in the DRC.<sup>90</sup> Zeid concluded that the problem of SEA in the United Nations “damages the image and credibility of a peacekeeping operation,” impedes its effectiveness, and may additionally constitute violations of international human rights or humanitarian law.<sup>91</sup>

The Zeid Report called on the United Nations to implement measures to prevent and monitor SEA in peacekeeping.<sup>92</sup> Calling for “radical change” within the U.N. system, Zeid set out several proposed reforms to alleviate and prevent SEA during UMC missions.<sup>93</sup> This included improving data collection on allegations of SEA and U.N. responses, developing U.N.-man-

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<https://www.unhcr.org/en-us/partners/partners/3c7cf89a4/note-implementing-operational-partners-unhcr-save-children-uk-sexual-violence.html> [https://perma.cc/B8PU-PVJF].

84. NEUDORFER, *supra* note 49, at 1.

85. *Id.* at 2.

86. *Id.*

87. OLIVERA SIMIC, REGULATION OF SEXUAL CONDUCT IN UN PEACEKEEPING OPERATIONS 47 (2012).

88. G.A. Res. 59/281, Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects (Mar. 29, 2005).

89. Prince Zeid Ra’ad Zeid al-Hussein (Permanent Rep. of Jordan), *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in the United Nations Peacekeeping Operations*, UN Doc. A/59/710 (Mar. 24, 2005) [hereinafter *Zeid Report*].

90. *Id.* ¶ 6.

91. *Id.* ¶ 10.

92. *Id.*

93. *Id.* ¶ 11.

dated education and training for peacekeepers before deployment, and increasing the number and proportion of female peacekeepers.<sup>94</sup> The Zeid Report also recommended the establishment of a “voluntary trust fund for victims” to provide assistance to victims of SEA.<sup>95</sup>

Of particular relevance to this Note were the recommendations made on how to provide better remedies for PKFC and their mothers.<sup>96</sup> These included ways to “assist a mother of a peacekeeper baby to obtain some child support,” such as enshrining the assumption that a paternity claim submitted to the United Nations is valid unless a father submits to a DNA test to refute the claim.<sup>97</sup> Additionally, Zeid proposed a positive obligation on all UMC members to pay paternity claims by authorizing operational superiors to impose monetary penalties on members who do not comply with their paternity duties.<sup>98</sup>

The Zeid Report’s suggested reforms were incorporated into U.N. practice to varying degrees. Despite ongoing efforts to increase the number of women peacekeepers, that number remains below five percent of total military peacekeeping forces.<sup>99</sup> Training to peacekeepers has been increased, but that training remains the primary responsibility of the TCC, not the United Nations.<sup>100</sup> Another reform implemented in the aftermath of the Zeid Report was the Trust Fund in Support of Victims, set up by then-Secretary-General Ban Ki-moon in 2015.<sup>101</sup> This trust fund does not offer compensation to individual victims of peacekeeper SEA, but instead provides funding to civil society organizations and NGOs, who in turn offer beneficiaries “rehabilitative and transformative opportunities.”<sup>102</sup>

Other reforms in the aftermath of the Zeid Report have likewise stalled. In 2008, in a time of intense media scrutiny on the SEA problem, the General Assembly adopted an “official strategy” on countering SEA during peacekeeping.<sup>103</sup> This effort promised to provide victims of SEA with medical and counseling services, and was championed by U.N. representatives.<sup>104</sup> However, months later the plan was quietly shelved, and eventually abandoned due to a lack of funding.<sup>105</sup> Evidence suggests that recommendations

94. *Id.* ¶¶ 18–19, 39–42.

95. *Id.* ¶ 56.

96. *Id.* ¶¶ 72–77.

97. *See id.* ¶¶ 72, 76.

98. *Id.* ¶¶ 72–77.

99. *Women in Peacekeeping*, UN PEACEKEEPING, <https://peacekeeping.un.org/en/women-peacekeeping#:~:text=In%202020%2C%20out%20of%20approximatley,personnel%20in%20UN%20Peace%20keeping%20missions> [https://perma.cc/9UBQ-UCNQ].

100. MUDGWAY, *supra* note 3, at 5.

101. Kirsten Wagner et al., *UNsupported: The Needs and Rights of Children Fathered by UN Peacekeepers in the Democratic Republic of the Congo*, 23 HUM. RTS. REV. 305, 310–27 (2022).

102. *Id.* at 310.

103. G.A. Res. 62/214, *United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel* (Mar. 7, 2008).

104. MUDGWAY, *supra* note 3, at 5–6.

105. *Id.*



for better training of peacekeepers had not been successful by 2015: An OIOS study in the aftermath of damning news reports accusing the United Nations of committing SEA on a massive scale in the Central African Republic (CAR) indicated that “there was still confusion among personnel about what constitutes ‘sexual exploitation.’”<sup>106</sup> Likewise, pledges made by Secretary-General Guterres in a sweeping 2017 report have still not been fully adopted as of 2019.<sup>107</sup> Guterres had promised to “provide victims a platform for their voice that the world will not be able to ignore,” saying he would meet personally with victims of SEA and elevate their concerns to the highest level.<sup>108</sup>

On combating SEA, Professor Cassandra Mudgway has argued that all reforms will be ineffective if they do not address the core problems which enable SEA perpetrators’ impunity.<sup>109</sup> She points to the accountability gap between the TCC, the host state, and the United Nations as a crucial factor.<sup>110</sup> However, fixing this gap would represent a larger change for the organization than implementing trust funds or training requirements: It would require a restructuring of the legal relationships between the United Nations and the member states involved in peacekeeping, and potentially a reconceptualization of the legal immunities of the organization itself. Due to these problems, sweeping promises to implement reforms have remained unfulfilled, and a “general lack of accountability” remains in the United Nations.<sup>111</sup>

The following two Parts build off the record of the United Nations’ failures at combating peacekeeper SEA through internal reforms, to examine the issue of peacekeeper babies. Part III begins from the premise that issues related to paternity claims and monetary support are *not* as fundamentally intractable a problem as SEA, at least in theory; rectifying the situations of mothers of PKFC does not require unknitting the laws governing IO immunities in the ways that may be required to effectively counter SEA writ large. Despite this fact, the United Nations’ record on peacekeeper paternity claims is just as wanting as its record on SEA, leading to the assumption that something more than the difficulty of the change is standing in the organization’s way of rectifying issues caused by its missions: a fundamental lack of interest and initiative among its upper echelon.

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106. *Id.*

107. Sienna Merope-Syngé, *Emerging Voices: Seeking Child Support from UN Peacekeepers – A View from Haiti*, OPINIO JURIS (Aug. 16, 2018), <http://opiniojuris.org/2019/08/16/emerging-voices-seeking-child-support-from-un-peacekeepers-a-view-from-haiti/> [<https://perma.cc/DX8D-6LT7>].

108. 2017 Special Measures Report, *supra* note 73, ¶ 21.

109. MUDGWAY, *supra* note 3, at 7.

110. *Id.*

111. *Id.*

### III. PEACEKEEPER BABIES

#### A. Background

This Part first sets out the problem of PKFC and examines common problems faced by the mothers of these children. It then considers remedies that could ameliorate these mothers' situations (namely, recognition of paternity and child support payments) and examines one impediment to achieving such remedies: that, under the United Nations' own taxonomy, *every* instance of a PKFC is classified as a case of sexual abuse and exploitation.

Peacekeeper babies have been documented since the beginning of U.N. peacekeeping.<sup>112</sup> These babies are children fathered by U.N. personnel and, often, are abandoned when the U.N. staffer concludes his mission post.<sup>113</sup> The issue of paternity claims and peacekeeper babies has "plagued the United Nations peacekeeping missions for a long time," with some estimates saying that over 24,000 babies were fathered during the United Nations' peacekeeping mission in Cambodia and over 6,000 in Liberia.<sup>114</sup> Like SEA, this issue has been "largely ignored" by the organization until reporting by journalists, researchers, and rights groups brought the problem to the public eye and media prominence in the mid-2000s.<sup>115</sup>

#### 1. SEA and "Zero Tolerance"

There is no "one model" of a case of PKFC. Some PKFC come from monogamous and committed relationships, where a peacekeeper and local woman were living in a domestic partnership, or a less serious relationship that nevertheless came as a result of romantic dating.<sup>116</sup> Others resulted from transactional sex, which could include varying degrees of external financial and societal pressures on the woman to engage in prostitution.<sup>117</sup> Still others result from clear cases of sexual assault or abuse, as in instances of forced sexual contact or when the mother was below the age of consent at

112. See NEUDORFER, *supra* note 49, at 1–3. The author hopes to make clear that the assumptions relied on in the following sections, namely of the heterosexual relationships between U.N. peacekeeper men and local women, are used only for practicality's sake as they have been construed that way by the field and in the relevant bodies of public health and human rights research. Romantic relationships and children resulting from other pairings, such as those representing the experiences of peacekeeper *women* or queer and/or gender nonconforming peacekeepers, are not discussed here. Nevertheless, those situations and identities should not be minimized in discussions of peacekeeper behavior and impacts; they are deserving subjects of further research.

113. See generally Olivera Simic & Melanie O'Brien, 'Peacekeeper Babies': An Unintended Legacy of UN Peace Support Operations, 21 INT'L PEACEKEEPING 345 (2014).

114. Ndulo, *supra* note 46, at 157.

115. *Id.*

116. Luissa Vahedi et al., "It's Because We Are 'Loose Girls' That's Why We Had Children with MINUS-TAH Soldiers": A Qualitative Analysis of Stigma Experienced by Peacekeeper-Fathered Children and Their Mothers in Haiti, 2022 J. INTERPERSONAL VIOLENCE 1, 7.

117. See SIMIC, *supra* note 87, at 128–30.

the time of conception.<sup>118</sup> And more resulted from relationships which blur the above categories and present thorny challenges of consent and power dynamics.<sup>119</sup>

Yet, for the United Nations, nearly every case of a peacekeeper fathering a child with a woman while on a UMC deployment is automatically classified as SEA.<sup>120</sup> This stems from a 2003 U.N. Secretary-General's *Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, disseminating the U.N. policy of "zero tolerance" toward SEA.<sup>121</sup> The U.N. definition includes forced or coerced sexual conduct, and some forms of transactional sexual conduct, when "under unequal or coercive conditions" or as an "abuse of a position of vulnerability, differential power, or trust."<sup>122</sup> But scholars, most notably including Professor Diane Otto, have pointed out that this definition encompasses effectively all peacekeeper sexual relations with local women, because the fact of *being* a U.N. peacekeeper qualifies as an unequal condition *vis-à-vis* local women.<sup>123</sup> Feminist scholars have critiqued this policy because its breadth thus includes with the same brush exploitative or criminal sexual relationships *alongside* many relationships that are consensual, and even monogamous and loving in nature, due only to an assumed power imbalance between a UMC father and a local woman.<sup>124</sup> Professor Dianne Otto argues that attempts to paint all forms of transactional sex as exploitative "denies women's sexual agency" and attempts to outlaw the practice around U.N. bases "will deprive many poor women of their livelihood."<sup>125</sup>

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118. Vahedi et al., *supra* note 116, at 7.

119. *Cf. id.*

120. See Dianne Otto, *Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies*, in *SEXUALITY AND THE LAW: FEMINIST ENGAGEMENTS* 259, 259-60 (Vanessa Munroe & Carl Stychin eds. 2007).

121. U.N. Secretary General, *Secretary General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, ST/SGB/2003/13 (Oct. 9, 2003) [hereinafter *Special Measures Bulletin*].

122. *Id.* § 1.

123. Otto, *supra* note 120, at 259-61. Professor Olivera Simic describes that, in certain cases, U.N. Force Commanders can make exceptions to the "zero tolerance" rule in light of a consenting sexual relationship between a peacekeeper and an of-age local. SIMIC, *supra* note 86, at 40. But this approach, too, presents concerns about both the privacy of the peacekeeper, liability to which they are exposed in reporting sexual behavior, and the appropriateness of a chain-of-command decision-making process.

124. See, e.g., Dianne Otto, *Sexual Tensions of UN Peace Support Operations: A Plea for Sexual Positivity*, 18 FINNISH Y.B. INT'L L. 33 (2007); see also Jena McGill, *Survival Sex in Peacekeeping Economies: Re-Reading the Zero Tolerance Approach to Sexual Exploitation and Sexual Abuse in United Nations Support Operations*, 18 J. INT'L PEACEKEEPING 1 (2014) (arguing that the zero tolerance framework is a "poor policy" and recommending a rights-based approach to SEA conception); Olivera Simic, *Rethinking 'Sexual Exploitation' in UN Peacekeeping Operations* 32 WOMEN'S STUD. INT'L F. 288 (2009) (arguing that the definition of SEA includes conduct that is "not necessarily 'sexually exploitative'"); Azad Essa, *Do UN Peacekeepers Do More Harm than Good?* ALJAZEERA (Aug. 9, 2017), <https://www.aljazeera.com/features/2017/8/9/do-un-peace-keepers-do-more-harm-than-good> [https://perma.cc/4J37-QY2K] (summarizing reactions to the zero tolerance policy).

125. Otto, *supra* note 120, at 35.

Peacekeeper babies, thus, present a different set of practical and moral issues than the ones normally involved in a case of SEA.<sup>126</sup> The United Nations' response to SEA is, as Otto has described, using a "blunt and dangerously over-inclusive instrument, which leaves no intellectual, legal, cultural, or personal space for listening and responding to the material circumstances" of women and girls.<sup>127</sup> The issue of PKFC deserves, and requires, a deftness and empathy of approach which the United Nations has kneecapped itself from being able to provide. As this Note develops further *infra*, this black-and-white categorization of the sexual relationships leading to PKFC as criminal is one reason that the United Nations may be hesitant or unwilling to provide civil recourse to mothers of these children.

## 2. Mothers' Need for Remedy

The fact that PKFC can be born out of non-criminal or non-exploitative relationships does not mean that the issue of PKFC deserves no attention by policymakers. Even if the relationships leading to PKFC are not a cause for investigation or alarm, the issues presented by the parentage of a PKFC, and the often-ensuing abandonment, present a clear need for remedy. Mothers and children uniformly struggle in the period after the peacekeeper father has left the mission area.<sup>128</sup> Raising children as a single mother and without the support of a father's branch of the family can be challenging; mothers are unsupported and may struggle financially to care for their babies.<sup>129</sup> Researchers report that women often suffer harm to their educational and occupational prospects, face difficulties procuring adequate food and sanitation, and may have to resort to risky behaviors such as prostitution to care for their children.<sup>130</sup> Lack of access to proper nutrition and sanitation as well as unstable living conditions present risk factors for PKFC as they develop.<sup>131</sup> Babies of nonlocal parentage may also be treated differently by members of the mother's community because of their mixed ethnicity or nationality, or because of societal stigmas against having premarital sex or children out of wedlock.<sup>132</sup> These dynamics may continue to impact the lives of PKFC, who some researchers have reported are shunned by other community members

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126. See Luissa Vahedi et al., "His Future Will Not Be Bright": A Qualitative Analysis of Mothers' Lived Experiences Raising Peacekeeper-fathered Children in Haiti, 119 CHILD & YOUTH SERV. REV. 2-3 (2020). One researcher argued that peacekeeper babies are inherently different than other instances of children born of war because "[u]nlike fathers representing opposition armies or rebel groups, the peacekeeper father conjures images of the blue helmet uniform, which symbolizes the protection of civilians and children in order to advance the agenda of peace, development, and stability in fragile states." *Id.* at 10.

127. Otto, *supra* note 120, at 259, 278.

128. See generally Vahedi et al., *supra* note 116.

129. See Ndulo, *supra* note 46, at 158.

130. See generally Wagner et al., *supra* note 101.

131. *Id.* at 314.

132. Larson & Dodds, *supra* note 64.

even as children.<sup>133</sup> Having children of an absent father likewise may make it difficult for a mother to marry within the community or to raise her children among her extended family and community.<sup>134</sup> Mothers of PKFC report to researchers that their most pressing needs include financial needs as well as the needs to obtain food, shelter, and basic sanitation, and these needs are exacerbated when compared to other women in the community, even in areas of high poverty.<sup>135</sup>

Filing civil paternity claims is one way in which local legal systems may allow mothers of peacekeeper babies to receive support, in the form of monetary payment, legal recognition of paternity status, or other tools. And, indeed, many women contacted by researchers were under the impression that the U.N. peacekeeping mission was obliged to provide them with some compensation, be that food vouchers, housing allowance, or even employment for themselves or their children.<sup>136</sup>

However, what makes reporting and prosecuting SEA in the context of UMC peacekeepers untenable is also what makes bringing civil claims against suspected fathers problematic: Women may not know the full name of their children's fathers or their titles in the U.N. mission. In cases where a peacekeeper's UMC deployment ends before a mother has a chance to bring her claim, she may be unable to locate him in his home country, where she may not speak the language or have sufficient connections to locate the father and bring a necessary legal claim or summons. Additionally, there may be no provisions in domestic legal systems that could compel action from those outside the state's territories, leaving absent fathers all but judgment-proof unless they happen to visit the mother's country again (not that she would be guaranteed to receive notice of any such visit). While regulations governing the conduct of some U.N. personnel do require the United Nations to honor court orders addressed to individual staff members, this does not apply to peacekeeping personnel.<sup>137</sup>

Scholars have proposed systems to strengthen the ability of the United Nations to connect mothers in mission areas with the peacekeeper fathers of their children. These include mandatory DNA testing of U.N. peacekeepers, either at the moment of a paternity claim brought to the attention of the

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133. Vahedi et al., *supra* note 116, at 9 ("The mother's assumed promiscuity and perceived socially non-conforming sexual behavior were transferred to the peacekeeper-fathered child.")

134. Kirstin Wagner et al., "IF I WAS WITH MY FATHER SUCH DISCRIMINATION WOULDN'T EXIST, I COULD BE HAPPY LIKE OTHER PPEOPLE": A QUALITATIVE ANALYSIS OF STIGMA AMONG PEACEKEEPER FATHERED CHILDREN IN THE DEMOCRATIC REPUBLIC OF CONGO, 14 CONFLICT & HEALTH 1, 7 (2020); see Ndulo, *supra* note 46, at 158.

135. See Wagner et al., *supra* note 101, at 315. Ironically, the circumstances of the PKFC's provenance compound the likelihood that mothers will face difficulties in child-rearing. The presence of UMC peacekeeping forces in a country signals that that area is undergoing often profound instability and breakdown of social norms, which would lead to only more challenges for mothers raising children as single parents.

136. See *id.* at 320.

137. Ndulo, *supra* note 46, at 159.

United Nations, or even before embarking on a peacekeeping mission.<sup>138</sup> Revisions to the Model SOFA could also make clear the duties of peacekeepers regarding paternity claims in local courts.<sup>139</sup> Others have suggested banning the hiring and recruitment of peacekeeping personnel from countries where the risk of sexual violence within peacekeeper forces is high, based on analysis of societal norms, treatment of women in the peacekeeper's country, and past records of peacekeeper behavior.<sup>140</sup> Recommendations originally included in the Zeid Report include developing systems and mechanisms to automate payments to women for paternity claims by garnishing the wages of peacekeepers, and setting up a victim's fund dedicated to child support payments.<sup>141</sup>

Taking the commitments of the United Nations at face value, some groups of women or advocates working on behalf of women have sought the United Nations' aid in reporting and compiling peacekeeper paternity claims. However, systems set out by the United Nations to support victims have repeatedly failed to act as intended and provide effective avenues of relief and accountability for mothers of PKFC and the children themselves. This lack of cooperation and facilitation leaves women with "no realistic prospect" of obtaining legally binding or enforceable paternity judgments.<sup>142</sup>

The following Sections describe two such cases. It sets out the situations of two UMC deployments that resulted in numerous instances of peacekeeper babies—Haiti and the Democratic Republic of the Congo—showing the experience of mothers of PKFC and the numerous obstacles to remedy and accountability in the U.N. system. In each section, I examine the problem of peacekeeper SEA in that context, the experiences of mothers who had peacekeeper babies, and to what extent they were able to bring civil claims against the fathers of their children. These cases exemplify the tortuous ineptitude and inefficiency of U.N. efforts (to the extent that such efforts exist) to address paternity claims.

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138. See *id.* at 158 ("[T]he solution would seem to be to work out mechanisms to help women and girls determine paternity, for example through DNA testing, and help them trace the fathers of their children.").

139. Lauren Gabrielle Blau, Note, *Victimizing Those They Were Sent to Protect: Enhancing Accountability for Children Born of Sexual Abuse and Exploitation by UN Peacekeepers*, 44 SYRACUSE J. INT'L L. & COM. 121 (2016).

140. See generally Harrington, *supra* note 47.

141. *Zeid Report*, *supra* note 89, ¶¶ 56, 61–64.

142. Wagner et al., *supra* note 101, at 308. Wagner et al. remark that there are some international instruments that would allow domestic courts to enact binding family law judgments, such as the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, but those have been signed by far fewer countries than necessary to implement enforcement.

## B. Case Studies: Haiti

### 1. MINUSTAH

U.N. peacekeepers came to Haiti for the first time in 2004, in the midst of protracted instability and poverty in the country following the coup d'état against President Jean-Bertrand Aristide.<sup>143</sup> The United Nations Stabilization Mission in Haiti (MINUSTAH) remained in the country until 2017 when it was scaled down and reconstituted under a new name and with a smaller force.<sup>144</sup> The presence of U.N. peacekeepers dramatically increased after the 2010 Haitian earthquake, which devastated large parts of the country and killed thousands.<sup>145</sup> This U.N. peacekeeping operation in Haiti represents perhaps the most infamous case of peacekeeper misconduct after a Nepali contingent of peacekeepers and poor sanitation methods at their U.N. camp began a cholera outbreak in Haiti, ultimately killing over 10,000 and leading to over 800,000 cholera infections.<sup>146</sup>

The U.N. forces in Haiti at MINUSTAH also left behind a disturbing legacy of SEA, with numerous reports describing allegations of pervasive SEA, including the abuse of children.<sup>147</sup> Along with SEA allegations came instances of pregnancies resulting from MINUSTAH: Reports have detailed “hundreds” of peacekeeper babies born to Haitian women and girls as young as eleven.<sup>148</sup>

### 2. *Experiences of Haitian Peacekeeper Babies*

The women who mothered PKFC in Haiti are exemplary of the wide range of situations in which peacekeeper babies are fathered—some children

143. MINUSTAH Fact Sheet, UNITED NATIONS PEACEKEEPING (last visited Mar. 30, 2022), <https://peacekeeping.un.org/en/mission/minustah> [<https://perma.cc/55HK-WEYA>] (describing the mandate of MINUSTAH as aiming “to restore a secure and stable environment, to promote the political process, to strengthen Haiti’s Government institutions and rule-of-law-structures, as well as to promote and to protect human rights”); *see also* REDRESS & CHILD RTS. INT’L NETWORK, LITIGATING PEACEKEEPER SEXUAL ABUSE 22 (2020).

144. MINUSTAH Fact Sheet, *supra* note 143.

145. *See id.*

146. Lindstrom, *supra* note 4, at 156.

147. *See, e.g.*, Sonia Elks, *Haitians Say Underaged Girls Were Abused by UN Peacekeepers*, REUTERS (Dec. 18, 2019, 1:43 PM), <https://www.reuters.com/article/us-haiti-women-peacekeepers/haitians-say-underaged-girls-were-abused-by-u-n-peacekeepers-idUSKBN1YM27W> [<https://perma.cc/8266-DWVY>]; Editorial, *A Scandal of Sexual Abuse Mars the UN’s Exit from Haiti*, WASH. POST (Apr. 17, 2017), [https://www.washingtonpost.com/opinions/a-scandal-of-sexual-abuse-mars-the-uns-exit-from-haiti/2017/04/16/d6947bde-213a-11e7-ad74-3a742a6e93a7\\_story.html](https://www.washingtonpost.com/opinions/a-scandal-of-sexual-abuse-mars-the-uns-exit-from-haiti/2017/04/16/d6947bde-213a-11e7-ad74-3a742a6e93a7_story.html) [<https://perma.cc/H7CE-MFH7>]; Skye Wheeler, *UN Peacekeeping Has a Sexual Abuse Problem*, HUM. RTS. WATCH (Jan. 11, 2020, 3:00 PM), <https://www.hrw.org/news/2020/01/11/un-peacekeeping-has-sexual-abuse-problem> [<https://perma.cc/Q6NW-QFPZ>].

148. REDRESS, *supra* note 143, at 42; *see also, e.g.*, Susan A. Bartles, *In Haiti, a Result of Peacekeepers Who Abuse Their Power: ‘Petits Minustahs’*, PASSBLUE (Jan. 16, 2020), <https://www.passblue.com/2020/01/16/in-haiti-peacekeepers-who-abuse-their-power-and-one-result-petits-minustahs/> [<https://perma.cc/GG2Q-P4F7>]; Elian Peltier, *UN Peacekeepers in Haiti Said to Have Fathered Hundreds of Children*, N.Y. TIMES (Dec. 19, 2019), <https://www.nytimes.com/2019/12/18/world/americas/haiti-un-peacekeeper.html> [<https://perma.cc/TPL2-6U3N>].

were the result of consensual and long-term relationships, while others were the result of forced sexual contact, transactional sex, or statutory rape.<sup>149</sup> Even in situations of loving and long-term relationships, some mothers reported that they were abruptly cut off from the fathers of their children when a MINUSTAH group was moved from the area to another posting.<sup>150</sup> In some cases where MINUSTAH fathers of children promised to send support and keep in contact with the mothers and children after they departed, those promises were “usually short-lived, and contact often ended abruptly following the peacekeeper’s departure.”<sup>151</sup> Anecdotal evidence shows that MINUSTAH fathers of children did not expect the United Nations to play any role in mandating that they recognize or support children born to Haitian women.<sup>152</sup>

In Haiti, peacekeeper babies “occupy precarious socio-economic positions, lacking the resources for adequate healthcare and/or education.”<sup>153</sup> In the group of ten women discussed *infra* who ultimately brought paternity claims against their peacekeeper partners, all of the mothers were “extremely impoverished and fac[ing] discrimination.”<sup>154</sup> Aside from socioeconomic hardship and societal discrimination, they also faced emotional issues, including “the heartache of being abandoned to look after their children alone.”<sup>155</sup> More than half of the women who filed claims lived in the south of Haiti in the area hit hardest by Hurricane Matthew, which further devastated the island in 2016.<sup>156</sup> As a result, some had been left without housing by the storm or had been forced to beg to obtain food for their children.<sup>157</sup>

Studies show that the problems faced by PKFC and their mothers generally, including obstacles to bringing claims, were replicated in Haiti. One study of peacekeeper babies in Haiti found that only six out of seventeen interviewed mothers of peacekeeper babies could identify their father by full name or nationality.<sup>158</sup> Problems faced by mothers raising PKFC were diverse and stretched beyond those of financial and material support: They additionally included challenges in how to explain to their children aspects

149. REDRESS, *supra* note 143, at 41–42.

150. Vahedi et al., *supra* note 116, at 5.

151. *Id.* at 6.

152. *Id.* (“[M]y little brother wrote [the father] again, he told him if you don’t send . . . [if you don’t] take care of the child, we will go to the MINUSTAH’s office so [they can make] you take care of the child. He answered, that won’t faze me given where I am right now.”)

153. REDRESS, *supra* note 143, at 41.

154. Karen McVeigh, *Haitian Mums Seek Support from UN Troops for ‘Peacekeeper Babies’*, THE GUARDIAN (Dec. 15, 2017, 8:34 AM), <https://www.theguardian.com/global-development/2017/dec/15/peacekeeper-babies-mums-haiti-support-un-troops> [<https://perma.cc/AM55-5JFJ>].

155. *Id.*

156. Rebecca Ratcliffe, *Haitian Mothers Claim UN Unresponsive over Support for Peacekeeper Children*, THE GUARDIAN (Apr. 21, 2017, 2:00 AM), <https://www.theguardian.com/global-development/2017/apr/21/haiti-mothers-claim-un-unresponsive-over-support-for-peacekeeper-children> [<https://perma.cc/CM34-P536>].

157. *Id.*

158. Vahedi et al., *supra* note 116, at 5.



of their fathers' identity,<sup>159</sup> trade-offs in giving up education to care for children,<sup>160</sup> and challenges navigating relationships with other men as a result of having children with a foreigner.<sup>161</sup>

### 3. *Attempts to Bring Civil Claims*

After nearly ten years of MINUSTAH presence in the country, a group of ten Haitian women attempted to bring paternity claims against the peacekeeper fathers of their children in local Haitian courts.<sup>162</sup> These women were represented by local human rights lawyers from the Bureaux des Advocates Internationaux ("BAI").<sup>163</sup> In 2016, the BAI gave notice to the United Nations that it intended to bring paternity claims in local courts on behalf of its clients who alleged peacekeeper paternity, and asked the organization to "fulfill its obligation to provide confirmation of the defendants' names, ranks and locations."<sup>164</sup> The BAI also asked the United Nations for the "results of any internal UN investigations, including the results of outstanding DNA tests, and confirmation from UN special representatives in Haiti that defendants in paternity cases are not protected by immunity."<sup>165</sup>

The United Nations, however, refused this notification, and "turned away" the notice "on the grounds of immunity."<sup>166</sup> This assertion of its immunity was not required by law or U.N. policies, given the fact that the United Nations itself was not going to be a defendant in the litigation, and was merely being asked to engage as a partner. Regardless, in a statement sent to *The Guardian* by the United Nations, a spokesperson for the Secretary-General wrote that responsibility lay wholly with the "individuals," and that the "U.N. itself cannot legally establish paternity or child support entitlements and . . . compensation is a matter of personal accountability to be determined under national legal processes."<sup>167</sup> But BAI lawyers stressed that "UN cooperation is crucial if the cases are to have any impact."<sup>168</sup> The group of peacekeepers implicated in the paternity suits was largely from Uruguay, and many of the peacekeeper fathers had returned to that country by the time their children were born or by the time the mothers started experiencing financial hardship.<sup>169</sup> The women thus faced challenges in

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159. *Id.* at 6–7.

160. *Id.* at 8.

161. *Id.* at 7–8.

162. REDRESS, *supra* note 143, at 41.

163. *Id.* The BAI was instrumental in pursuing legal challenges against the United Nations for the cholera epidemic in Haiti as well.

164. *Id.* at 42.

165. *Id.*

166. *Id.*

167. McVeigh, *supra* note 154.

168. Ratcliffe, *supra* note 156.

169. *Id.*

reaching the fathers of their children that were insurmountable without the United Nations' participation as a coordinating partner.<sup>170</sup>

In 2017, despite their failures to receive an adequate response from the United Nations, BAI filed suit in local Haitian court against U.N. peacekeeper fathers on behalf of the ten women and their twelve PKFC.<sup>171</sup> In the suit, the BAI argued that the UMC members' immunities to prosecution contained in MINUSTAH's SOFA were not at issue because "having and then abandoning children is not within the official capacity of a UN peacekeeper and therefore [. . .] this does give a Haitian court jurisdiction to resolve paternity and child support claims."<sup>172</sup> In a letter sent just months after VRA Jane Connors assumed her position at the United Nations, BAI lawyers called on the United Nations to stop the practice of "impunity" and abide by the letters of their own policies to compensate victims.<sup>173</sup> They asked the United Nations to furnish information on:

a) identification of the fathers, identification documents, their commanders and the officers responsible for investigating these allegations, b) information related to any investigation by the UN's Conduct and Discipline, MINUSTAH or any other UN relevant agency related to the mothers' paternity claims, and any decisions rendered, c) a determination of whether the actions of the father soldiers in entering sexual relations, impregnating and abandoning the petitioners are part of the official duties of the soldiers as members of MINUSTAH, in order to verify if the functional immunity of the Status of Forces Agreement (SOFA) between the UN and Haiti is applicable in these cases; and d) to provide the DNA test results.<sup>174</sup>

Jane Connors, in a visit to Haiti in 2018, met with women represented by the BAI and assured them that the United Nations would listen to their concerns and uplift their voices.<sup>175</sup> These platitudes, however, turned out to

170. *See id.*

171. REDRESS, *supra* note 143, at 42; Press Release, Bureau des Avocats Internationaux & Inst. for Just. & Democracy in Haiti, Ten Mothers of 11 Children Abandoned by UN Peacekeepers Bring a Legal Action to Recover Child Support and Establish Custody (Dec. 11, 2017), [http://www.ijdh.org/wp-content/uploads/2018/07/Press-Release\\_child-support-claims-filed-in-Haiti-against-UN\\_121117.pdf](http://www.ijdh.org/wp-content/uploads/2018/07/Press-Release_child-support-claims-filed-in-Haiti-against-UN_121117.pdf) [<https://perma.cc/8SBB-7DEJ>] [hereinafter 2017 Press Release].

172. McVeigh, *supra* note 154.

173. 2017 Press Release, *supra* note 171.

174. *Id.*

175. Press Release, Bureau des Avocats Internationaux & Inst. for Just. & Democracy in Haiti, Lawyers Denounce UN's Failure to Cooperate in Paternity and Child Support Suits Against UN Peacekeepers (Jan. 14, 2019), <http://ijdh.org/wp-content/uploads/2019/01/Press-Release-Open-Letter-to-UN-Victims-Rights-Advocate-2-1.pdf> [<https://perma.cc/SX78-L7T9>]; Jane Connors, *Jane Connors: "Putting Victim at the Centre"*, MINUJUSTH (Sept. 17, 2018), <https://minujsth.unmissions.org/en/jane-connors-putting-victims-centre#:~:text=Jane%20Connors-Jane%20Connors%2C%20Victims%20Rights%20Advocate%20visited%20Haiti%20from%2022%20to,to%20sexual%20exploitation%20and%20abuse> [<https://perma.cc/B2TR-YUKU>].

be empty promises. When a Haitian court handed down an order requesting that MINUSTAH members give information including DNA tests to the women attempting to prove paternity, the United Nations refused.<sup>176</sup> BAI lawyers also reported that the United Nations was attempting to “circumvent” their legal representation of the women and approached the women directly, in a move that signaled, according to the BAI, a “lack of respect for the Haitian judicial system and the rule of law.”<sup>177</sup> BAI lawyers railed against the obstructionism and inaction of the United Nations as “non-responsive, non-cooperative and opaque.”<sup>178</sup>

Further developments came in a mid-2020 letter from Jane Connors addressed to the BAI.<sup>179</sup> Connors confirmed that the United Nations would no longer block attempts for civil claims to proceed in Haitian courts, as it had determined that the proceedings “were not related to [peacekeepers’] official duties.”<sup>180</sup> And, finally, in March 2021, a Haitian court ruled in favor of one of the Haitian women, ordering the father of her child to make child support payments.<sup>181</sup>

Far from being a heartening resolution to the story, however, this demonstrates the gargantuan feats that women must endure to collect child support payments against U.N. peacekeepers. It was only with the assistance of a team of expert human rights lawyers, working pro bono, and the attention of international news media, that a case concluded favorably. Even with that assistance, the attempt took a total of seven years, during which time the child and mother were left without monetary assistance or U.N. aid. The necessary burden of proof, time, effort, and resources that are necessary to bring claims in local courts and to persuade (through PR campaigns which cannot always be replicated) the United Nations to use its considerable discretion to cooperate with judgments are so high as to put a remedy out of reach for virtually all women. If this is the U.N. system working as it is designed to, two decades after members in the upper echelon of the organization started proclaiming the need for reforms, then things have gone deeply wrong.

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176. *Id.*

177. *Id.*

178. *Id.*

179. Letter from Jane Connors, UN Victim’s Rights Advocate, to Mario Joseph, Attorney, Bureau des Avocats Internationaux, & Sandra C. Wisner, Attorney, Inst. for Just. & Democracy in Haiti (Aug. 5, 2020), <http://www.ijdh.org/wp-content/uploads/2020/11/Response-to-BAI-letter-of-May-2020-5.08.2020-1.pdf> [<https://perma.cc/3SJ6-QB85>].

180. *Id.*

181. Paisley Dodds, *Haitian Court Orders UN Peacekeeper to Pay Child Support in Landmark Case*, NEW HUMANITARIAN (Mar. 12, 2021), <https://www.thenewhumanitarian.org/news/2021/3/12/UN-peace-keeper-ordered-to-pay-child-support-to-Haitian-mother> [<https://perma.cc/Z4HS-HJ2Y>].

### C. Case Studies: Democratic Republic of the Congo

#### 1. MONUC/MONUSCO

U.N. peacekeepers have had a presence in the DRC since the first U.N. Security Council Resolution authorizing their deployment in 2000.<sup>182</sup> Between 1998 and 2003, war in the DRC claimed the lives of hundreds of thousands, in one of the continent's deadliest conflicts and the world's deadliest one since World War II.<sup>183</sup> UMCs arrived in the DRC to perform services including humanitarian assistance and security-sector reform, concentrated around the Kivu region.<sup>184</sup> The peacekeeping force was known originally as the United Nations Organization Mission in the Democratic Republic of Congo ("MONUC") and was reconstituted as the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO") in 2010.<sup>185</sup>

Numerous studies have documented the problems of SEA perpetrated by peacekeepers in the DRC, which by at least one account was the highest of all UMC missions.<sup>186</sup> Over 150 allegations of SEA were lodged against MONUC in 2006 alone.<sup>187</sup> Allegations of SEA first surfaced in 2004, and were reportedly first investigated in 2006 after a journalist sent a U.N. officer a draft article detailing UMC soldiers engaging in sexual acts with minors in an Internally Displaced Persons ("IDP") camp near Kivu.<sup>188</sup> A decade after the first allegations, the problems surrounding SEA in MONUC and its successor still persisted. A Congolese woman speaking to the Associated Press in 2017 said that she refused to allow her adoptive daughter, a child born of SEA to a peacekeeper father, near the U.N. bases out of fear that peacekeepers who still remained in the country would target her as well.<sup>189</sup> "The peacekeepers try to distract the girls with cookies, candy and milk to rape them," she told the journalists.<sup>190</sup> One girl, eleven when she was assaulted, reported to journalists that peacekeepers had offered her "bread and a banana" in order to entice her into the base.<sup>191</sup>

#### 2. Experiences of Congolese Peacekeeper Babies

Hundreds of allegations of peacekeeper babies were reported in connection with MONUC and MONUSCO. After peacekeeper fathers departed (or

182. S.C. Res. 1291, S/RES/1291 (Feb. 24, 2000).

183. Wagner et al., *supra* note 134, at 2.

184. *Id.*

185. NEUDORFER, *supra* note 49, at 96.

186. *Id.* at 6.

187. *Id.*; see also Dave Bryan, *UN: 11 Tanzanian Peacekeepers Face Paternity Claims*, ASSOC. PRESS (Apr. 4, 2016), <https://apnews.com/article/1272a15627524a3888380199c63dccc1f> [https://perma.cc/QD6V-KB2W].

188. NEUDORFER, *supra* note 49, at 96.

189. Larson & Dodds, *supra* note 64.

190. *Id.*

191. *Id.*

even while they remained, in cases of transactional or nonconsensual relationships), these PKFC and their mothers experienced persistent harm due to their parentage.<sup>192</sup> Children born of peacekeeper fathers were shunned in their villages, and experienced “labelling, stereotyping, separation, status loss, and/or discrimination.”<sup>193</sup> In some cases, children were assumed to be HIV positive by their peers and community members, facing additional stigma.<sup>194</sup> Mothers reported “not being able to finish their studies, of being thrown out of their homes for getting pregnant, and of not being able to find husbands because of their mixed-race children.”<sup>195</sup> Some of the women were forced into sex work in order to care for their children.<sup>196</sup>

### 3. *Impediments to Reporting*

Paternity allegations against peacekeepers in the DRC were in large part the results of nonconsensual or exploitative relationships, often with under-aged girls, that more clearly fit the label of SEA.<sup>197</sup> This is in contrast to the case of MINUSTAH in Haiti, where there was a larger prevalence of PKFC from consensual or loving relationships. Mothers in the DRC also, as opposed to in Haiti, were not aided by any local group of human rights lawyers or advocates. While the initial reports of sexual assault did receive press attention, the sustained attention that the Haiti case received in the international media, possibly helped along by the outrage over the United Nations’ role in the Haitian cholera outbreak and the sustained efforts of the advocates at the BAI, was nonexistent in the DRC case.

Instead, local women wishing to make paternity claims or to seek out child support payments went directly to the United Nations.<sup>198</sup> In one research study, roughly half of the identified PKFC mothers reported their case to U.N. officials in their local communities.<sup>199</sup> No report to U.N. authorities was ultimately successful in regaining contact with the father or receiving child support payments.<sup>200</sup> In most cases, the women later told researchers that their claims were “ignored or rejected,” while in a quarter of cases they described “an initial investigation or legal case,” but without an ultimate finding of compensation.<sup>201</sup> Barriers to reporting paternity at the United Nations included: “(i) lack of credible evidence, (ii) unclear complaint pathways, (iii) misinformation, (iv) change in policies, (v) lack of confidence in authorities, (vi) fear of negative consequences and (vii) the

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192. See Wagner et al., *supra* note 101, at 7.

193. *Id.* at 5.

194. *Id.* at 9.

195. Larson & Dodds, *supra* note 64.

196. Wagner et al., *supra* note 101, at 6.

197. See Larson & Dodds, *supra* note 64.

198. See Wagner et al., *supra* note 101, at 313.

199. *Id.*

200. See *id.*

201. *Id.*

expectation of resilience.”<sup>202</sup> While some of these reasons, like the distrust of authorities or fear of the United Nations’ reprisal, can be attributed to societal factors and elements of local culture and gender roles, others are more attributable to the United Nations. In these situations, women reported widespread misconceptions about the type of remedy that they could receive (with many reporting that they expected to be awarded employment at the U.N. mission if their paternity claims were validated).<sup>203</sup> They also assumed that making complaints against peacekeepers once they had left the DRC was impossible.<sup>204</sup> They furthermore reported being too intimidated to approach U.N. personnel (especially daunting in cases where a woman was a victim of sexual abuse or harassment at the hands of UMC members), uncertainty over *whom* to approach, and a lack of trust in authority figures due to experiences with corrupt police and local authorities.<sup>205</sup>

In the DRC, the greater social context was also important. The MONUC mission and its U.N. peacekeeper presence in the DRC existed due to prolonged social instability and conflict and a breakdown of normal governance and rule of law.<sup>206</sup> In that context, many of the women who were mothers to PKFC were young, without schooling, traumatized from conflict and from sexual relationships with peacekeepers, and struggling to raise children in an environment where their community was actively shunning them for the parentage of their children.<sup>207</sup> In such a situation, it is facially absurd to expect these young mothers to embark on the kind of odyssey of legal claims that the Haitian women, aided by BAI, were able to file. In the DCR, women—limited by their socio-economic circumstances and social norms—could travel seeking justice no further than the U.N. mission posts closest to them. But at these posts they were utterly failed by peacekeeper representatives and administrators.

Moreover, the U.N. missions in the DRC, due to the ongoing conflict, often acted as the most stable existing form of local law enforcement and governance in areas otherwise wracked by instability.<sup>208</sup> In such a situation, the U.N. should have a *greater* proactive responsibility to communicate its policies and the possible recourse that women could seek under law, as they are there within the community to provide support to social services and the rule of law, not actively detract from them.

202. *Id.* at 317.

203. *See id.* at 316.

204. *See id.* at 318.

205. *See id.* at 317.

206. *Cf. MONUC Background*, UN PEACEKEEPING, <https://peacekeeping.un.org/mission/past/monuc/background.shtml> [<https://perma.cc/X3CU-V6SV>].

207. *See* Wagner et al., *supra* note 101, at 313.

208. *See* ENHANCING UNITED NATIONS CAPACITY TO SUPPORT POST-CONFLICT POLICING AND RULE OF LAW 10, 17–18 (William J. Durch & Madeline L. England eds., 2010).

## IV. REMEDIES AND EMPTY PROMISES

The types of remedies that these mothers are asking for are not onerous for the United Nations to provide—it may be as simple as providing forwarding addresses or identifying documents for the peacekeeper father, or the slightly more involved tasks of verifying paternity through DNA testing or attempting to secure enforcement of child support orders. And the mothers of PKFC are not the only ones whose livelihoods are at stake: The children themselves deserve a duty of care by the United Nations.

Taken together, the United Nations' inadequacies at addressing peacekeeper paternity claims reveal the depth and breadth of its failings toward victims of U.N. bad acts. The experiences of mothers of peacekeeper babies in Haiti and in the DRC show the human toll of peacekeeper misconduct and U.N. failings. At every step of the process, from the persistent obstructions in the courts to the empty platitudes in letters from the VRA to the stonewalling of women in the DRC, the United Nations has been confronted with moments where it *could*, under its powers and discretion, move levers and galvanize action to make real, meaningful differences in the lives of women who have been harmed by U.N. personnel.

The United Nations has repeatedly, on issues ranging from mass torts in Haiti to failure of mission duty in Bosnia, committed errors in the field of its peacekeeping work that have led to harm, including deaths. Some of the problems facing the United Nations are hard, and intractable, and entangled in a web of organizational legal immunities stretching back decades. The “asks” in those situations are challenging—it is almost insurmountable to properly atone for the devastation caused by the Haitian cholera outbreak or failures of standards of care at Srebrenica. In contrast, the steps the United Nations would need to take to satisfactorily rectify the problem of abandoned peacekeeper children are supremely doable: The United Nations would not need to open itself up to legal vulnerabilities to take more of an initiative to pass along peacekeeper names and biographical information to women who seek to make paternity claims. The United Nations could also establish a DNA database or require national military contingents to garnish the paychecks of men who have fathered children in mission areas, in recognition of the immense barriers that women would otherwise face getting confirmation of paternity or winning claims in local courts.<sup>209</sup>

For decades, in a now-predictable cycle, activists, scholars, member states, and the United Nations' own hired experts have outlined the problem and made suggestions for changes that could be implemented to rectify the issues. And time and time again, for the past two decades, the initiative of the United Nations to go the final mile to *enacting* any of the recommended

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209. Feasibility of these solutions depends necessarily on the consent of the TCC and their military apparatus and may pose a potential obstacle in certain cases if TCC signaled their unwillingness to submit troops to testing or to enforce child support orders.

mechanisms and programs fades as soon as the media outcry does. As it stands, the United Nations' position has been to stick to a posture of empty promises and big words: committing to stand by victims but also remaining reluctant and inconsistent in what assistance it gives to mothers' claims while proclaiming that peacekeepers *themselves* should be the ones to own up to their individual responsibility and abide by the law. These cycles of failure and harm only compound the criticism of the United Nations, levied by member states<sup>210</sup> and by members of the press<sup>211</sup> and independent experts.<sup>212</sup> And persistent failures of accountability may jeopardize the future of U.N. missions which depend on the consent and trust of host states and communities for their success.

### CONCLUSION

What could explain this complete lack of action on the part of the United Nations? Many of us hope to think of the United Nations as a benevolent actor, in whose ranks are found protectors and advocates for the worst situated in the world. It is, thus, both disheartening and frankly unexpected to confront the United Nations' inaction when presented with clear evidence of systemic peacekeeper wrongdoing. Why does the United Nations so enthusiastically convene expert advisory panels to formulate remedies or institutional changes, only for those changes to be ignored or implemented only half-heartedly? If the United Nations wishes to keep its reputation and status as a global protector and keeper of the peace intact, why is it so unwilling to make positive internal changes?

I argue that a more plausible explanation, however, takes into account the organizational structure of the United Nations. The fact that the United Nations, inexplicably and against its own interests, remains so hostile to using its organizational discretion to provide remedies for PKFC mothers reveals underlying tensions within its own structure. While the issue of peacekeeper paternity claims does not implicate the fraught legal questions of the United Nations' legal responsibility for peacekeeper sexual assault or for mass torts/criminal negligence committed by peacekeepers, the United Nations' vested interest in avoiding accountability in *those areas* (where settlements and necessary changes to the United Nations' budget structure

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210. E.g., Corker Disgusted by Sexual Abuse by UN Peacekeepers, Demands Consequences for Countries that Fail to Punish Troops for Misconduct, FOREIGN REL. COMM. (Apr. 13, 2016), <https://www.foreign.senate.gov/press/rep/release/corker-disgusted-by-sexual-abuse-by-un-peacekeepers> [https://perma.cc/85WF-W8TH].

211. E.g., Skye Wheeler, *UN Peacekeeping Has a Sexual Abuse Problem*, THE HILL (Jan. 11, 2020, 3:00 PM), <https://thehill.com/opinion/international/477823-un-peacekeeping-has-a-sexual-abuse-problem/?rd=1578754838> [https://perma.cc/KS3G-TXCV].

212. E.g., Sanam Naraghi Anderlini, *UN Peacekeepers' Sexual Assault Problem*, FOREIGN AFFS. (June 9, 2017), <https://www.foreignaffairs.com/articles/world/2017-06-09/un-peacekeepers-sexual-assault-problem> [https://perma.cc/DQ97-RSMQ].



could easily run into the billions of dollars) is rock solid. It is plausible that those inside the United Nations and its legal advisor's office, would find it imprudent to allow for *any* statements or actions suggesting that the organization believes it is its responsibility to facilitate and furnish child support payments to mothers of PKFC, out of fear that those legal facts could be thrown against it in arguments seeking to establish greater overall legal liability for harms.

Another partial explanation may rely on the steps that the United Nations' policy around SEA may have taken to tie its hands in relation to issues of peacekeeper claims. The 2003 Secretary-General bulletin which classified all peacekeeper sexual conduct as forbidden under peacekeeping rules<sup>213</sup> had larger implications than the feminist critiques presented (and discussed *supra*). Its stark categorizations de facto imbued any acknowledgment of sexual relationships on the United Nations' part with an element of wrongdoing. While it may have been politically uncontroversial to ask for TCC's blessing to share the names, nationalities, or even DNA of UMC members for the purpose of facilitating paternity claims, it is much more challenging once proving the fact of fatherhood necessitates a background finding of U.N. misconduct through an admission of SEA. This gives peacekeepers an additional motive to deflect mothers' attempts to be connected with them: They would fear not only the payment of support, but possible disciplinary action from their home militaries or from U.N. mechanisms.

Ultimately, these failings of the U.N. bureaucracy have much broader implications than for just the women whose children were fathered by peacekeepers. U.N. peacekeeping missions depend for their safety and effectiveness on the trust and esteem of the local population. The powder-blue U.N. berets and helmets have represented, in dozens of conflict theaters over the past seventy years, authority, justice, and stability. But any shirking of responsibilities and duties, whether they be legal or moral, degrades this relationship of trust. As activists and advocates for victims, it is our responsibility to continue pushing the United Nations for greater accountability, and to shift the stakes so that the United Nations is motivated to use its discretionary powers to bring real recourse to women and victims: those seeking paternity claims or those who have been victims of SEA, or both. More research and investigation is needed to determine the exact legal and political calculus under which the United Nations is making these decisions. For the time being, the task is left up to advocates and civil society leaders to fill the void left by the United Nations' accountability gap and empty promises.

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213. See *Special Measures Bulletin*, *supra* note 121.

