Numerous IHRL and IHL treaties and instruments provide for the protection of women and children from sexual offences in various contexts. As noted, many authors have engaged in detailed analysis of sexual offences as war crimes and human rights violations. This Chapter does not seek to re-cover these grounds in any detail. The focus of this Chapter is on the legal and conceptual difficulties with applying IHL and IHRL in the context of SEA committed by UMC personnel.

Section I of this Chapter will consider some problems that arise around the application of IHL to UMC personnel, as a necessary prelude to Chapter IV on the possibility of prosecuting UMC personnel before the ICC, and Chapter VI on state and international organization responsibility for acts or omissions in relation to SEA. It will be argued that while the applicability of IHL to UN peacekeepers has caused considerable debate in the past, many would now accept that UN peacekeepers, when engaged as combatants, are at a minimum bound by the customary international law standards of IHL. Furthermore,


Chapter III

TCCs deploying troops to UN operations also remain bound by their IHL obligations. Obligations imposed by IHLL instruments will be considered in light of possible consequences for the TCC, and/or the UN, when UMC personnel violate IHL. IHL affords some protection to civilians from some forms of SEA; these will be addressed in brief. Chapter IV will consider in greater detail whether SEA by UMC personnel could constitute war crimes, in the context of possible prosecution before the ICC.

Section II of this Chapter will address some of the problems with applying IHRL in the context of UN peacekeeping operations and human rights violations by UMC personnel. It will be argued that aside from customary international law and jus cogens norms, IHRL does not apply de lege to the UN and its operations. Nevertheless, it will be argued that the UN should require all personnel it deploys on its operations to respect IHRL as a matter of policy. It will then consider whether any additional IHRL obligations may arise for the UN and/or TCCs in the context of UN transitional administrations. Next, Section II will explore whether TCCs have any IHRL obligations towards victims of SEA due to the extraterritorial conduct of their troops. This depends on the approach taken to interpreting the jurisdictional provisions of IHRL treaties, and in particular the extent of authority or control exercised by the State over victims, although the precise level of control required is uncertain. A number of courts and IHRL monitoring bodies have considered this issue. I will attempt to draw some principles from the jurisprudence of these bodies, and consider possible implications in terms of TCC obligations towards victims of SEA. I will then focus on the possible scope of TCC obligations toward victims of SEA and possible consequences in case of a breach.