CHAPTER 12

ACCOUNTABILITY FOR THE CONDUCT OF UN-MANDATED FORCES UNDER INTERNATIONAL HUMAN RIGHTS LAW: A CASE STUDY CONCERNING SEXUAL ABUSE OF THE UN MISSION IN THE DEMOCRATIC REPUBLIC OF CONGO (MONUC)

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I. INTRODUCTION

Peacekeepers involved in post-conflict peace operations have been accused of serious human rights abuses, such as sexual exploitation and abuse committed by military, civilian police and civilian peacekeeping personnel. However, this is not a new phenomenon. Starting in the UN missions in Bosnia and Herzegovina and Kosovo in the early 1990s, to Cambodia and Timor-Leste in the early and late 1990s, to West Africa in 2002 and the Democratic Republic of Congo in 2004, peacekeepers committing these crimes have escaped with impunity, returning to their home countries unpunished. Immunities attached to the peacekeepers create problems and raise the question of jurisdiction.

The UN mission in the Democratic Republic of Congo (MONUC) serves as an example to show accountability mechanisms under international human rights law, reflected in MONUC's mandate, its own Code of Conduct but also

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In 2004, the Department of Peacekeeping Operations (DPKO) received 16 allegations against civilians, nine against civilian police and 80 against military personnel. The majority related to sex with persons under 18 (45 percent) and sex with adult prostitutes (31 percent). Allegations of rape and sexual assault comprised 13 percent and 5 percent, respectively. The remaining 6 percent of allegations related to other forms of sexual exploitation and abuse defined in the 2003 Secretary-General’s Bulletin. See UN Doc. A/59/710, Marc. 24, 2005.
the different accountability mechanisms provided by the United Nations in cases of sexual abuse committed by UN peacekeepers. Ultimately, this chapter suggests alternative means to hold peacekeepers accountable by examining possibilities of jurisdiction such as UN on-site courts martial, model memorandum of understanding and model criminal codes for post-conflict states.

This chapter, therefore, will be structured as follows: Section II will look at facts and figures of MONUC and the problems this mission faces; Section III will discuss the accountability mechanisms under international human rights law. Section IV will focus on the legal obligations of troop contributing countries (TCC), state responsibility (due diligence) and recommendations for future missions to hold peacekeepers and their countries accountable for their misconduct. Conclusions are made in Section V.

II. UN PEACEKEEPING MISSION IN THE DEMOCRATIC REPUBLIC OF CONGO (MONUC)

To provide a better understanding of the complicated task that MONUC has to face in the Democratic Republic of Congo (DRC), a brief outline of the dramatic situation that exists in the country will show the problems the UN peace operation is confronted with. According to a UN country profile of the DRC:

the Congolese conflict has been the most deadly in the world since the Second World War, leaving an estimated 3.8 million people dead between August 1998 and April 2004; the current death toll is about 1,000 persons a day, which adds a further 280,000 victims for the period between May 2004 and January 2005.2

The history of the DRC3 has been one of civil war and corruption. After independence from Belgium in 1960, the country immediately faced an army mutiny and an attempt at secession by its mineral-rich province of Katanga. Neighboring states were active participants: Zimbabwe, Angola and Namibia backed the DRC government, while Rwanda, Uganda and Burundi supported anti-government rebels and invaded the North and East of the DRC. On July 10, 1999, the DRC along with the neighboring states, with exception of Burundi, signed in Lusaka, Zambia, a ceasefire agreement to end hostilities. It also provided for a Joint Military Commission (JMC) composed of two representatives from each party under a neutral chairman appointed by the Organization of African


54.4 million people live in the DRC (UN, 2004), a country larger than Western Europe (2.34 million sq km). The main exports are diamonds, copper, coffee, cobalt. The growth national income (GNI) per capita is US $100 (World Bank, 2003) and the life expectancy is 41 years.