

COMBATING IMPUNITY IN HAITI: WHY THE ICC  
SHOULD PROSECUTE SEXUAL ABUSE BY UN  
PEACEKEEPERS

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INTRODUCTION

The sexual abuse of children in Haiti has been reported on by various international media outlets,<sup>1</sup> of particular note is the systematic rape of young girls by Sri Lankan Peacekeepers<sup>2</sup> and the abuse of a teenage boy by five peacekeepers from Uruguay.<sup>3</sup> Despite the efforts of the United Nations (hereinafter UN) to train peacekeepers and implementing a 'zero-tolerance' for sexual violence committed by peacekeepers<sup>4</sup> they have not succeeded in preventing these human rights violations.<sup>5</sup> Furthermore, according to the Status-of-Forces Agreements, States have the duty of prosecuting their citizens for offenses committed while serving with the UN peacekeeping missions;<sup>6</sup> however, the accused offenders often go

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1. Alex Newman, *UN Troops Accused of Sex Crimes Worldwide*, THE NEW AMERICAN (Sept. 08, 2011, 11:49 AM), <http://www.thenewamerican.com/world-mainmenu-26/africa-mainmenu-27/8910-un-troops-accused-of-sex-crimes-worldwide>.

2. Neil MacFarquhar, *Peacekeepers' Sex Scandal Linger, On and Off Screen*, NEW YORK TIMES (SEPT. 7, 2011), <http://www.nytimes.com/2011/09/08/world/08nations.html?pagewanted=all>.

3. Ansel Herz, et al., *UN peacekeepers Accused of Sexually Assaulting Haitian Teen*, ABC NEWS (SEPT. 2, 2011), <http://abcnews.go.com/Blotter/peacekeepers-accused-sexually-assaulting-haitian-teen/story?id=14437122>

4. See *UN confirms sex charges against Sri Lankan troops in Haiti child abuse*, TAMIL GUARDIAN (APRIL 09, 2008), <http://www.tamilguardian.com/article.asp?articleid=1652> [hereinafter *UN confirms sex charges*].

5. See IASC Task Force on Protection from Sexual Exploitation and Sexual Abuse in Humanitarian Crises, IASC Task Force Mission Report: Liberia and Sierra Leone, 9 (Oct. 2002)[hereinafter ISAC Task Force].

6. Agreement Between The United Nations and the Government of Haiti Concerning the Status of the United Nations Operation in Haiti, July 9, 2004, at art. 51(b)[hereinafter Agreement].

without punishment or diminished sentences and the penalties vary between the States.<sup>7</sup> Child victims continue to endure the effects of the abuse and lack the closure of justice being served because their abusers are not held accountable for their depraved acts. Consequently, the international community and the United Nations must prove their commitment to protecting children through the establishment of a limited tribunal held by the International Criminal Court (hereinafter ICC). This paper argues that sexual abuse of children committed by UN peacekeepers in Haiti during the Stabilization of Mission to Haiti (hereinafter MINUSTAH) should be submitted to the ICC for prosecution because protecting children from sexual violence is not only a legal obligation but also a moral obligation that all members of the human race have.

Part I examines the origin and history of UN peacekeeping missions which have transcended from maintaining cease-fires to humanitarian efforts. Part I also looks at the history of the UN presence in Haiti, which is known as MINUSTAH. Part II studies the sexual violence committed against children by UN peacekeepers in Haiti, where there have been two widely reported incidents, one involving peacekeepers from Sri Lanka and the other with Uruguayan troops, and the UN response to the allegations. Part III then examines whether prosecution of these alleged child sex offenders by the ICC is possible in light of the Status of Forces agreement and makes a recommendation for a limited ICC tribunal. Part IV contends that prosecution of the alleged sexual offenders by the international community is both a moral and legal obligation, one that is advanced and encouraged by the Holy See. This paper also recommends, in light of legal duties and moral obligations, that those who allegedly sexually assault or rape children while performing peacekeeping missions should be submitted to the ICC for prosecution.

## I. HISTORY OF UNITED NATIONS PEACEKEEPING MISSIONS AND MINUSTAH

In 1948, the United Nation's Security Council (hereinafter Security Council) authorized the first peacekeeping mission in response to the beginning Cold War in order to maintain ceasefires, stabilizing ground situations, and provide crucial support for political efforts to

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7. See discussion *infra* part II(B).

maintain peace.<sup>8</sup> The UN peacekeeper forces are a part of the broader mission and activities of the UN: conflict prevention and mediation, peacemaking, peace enforcement, and peace building.<sup>9</sup> It is recognized that UN peacekeeping forces are not provided *per se* in the UN Charter, but the UN is charged with the “primary responsibility for the maintenance of international peace and security.”<sup>10</sup> To maintain international peace and security the Security Council and UN peacekeeping operations have had to adapt from traditional operations, which were essentially military in nature and focused on regional cease-fires and investigating complaints of violations, to internal conflicts and civil wars.<sup>11</sup>

Peacekeeping within the past sixty years has become increasingly multi-dimensional, where peacekeepers not only provide security, stabilization, and peace consolidation; but may also assume legislative and administrative functions of the State.<sup>12</sup> Today, UN peacekeeping forces do not only perform their traditional duties of implementing cease-fire or peace agreements, but are also used to “facilitate the political process, protect civilians, assist in disarmament, demobilization and reintegration of former combatants; support the organization of elections, protect and promote human rights and assist in restoring the rule of law.”<sup>13</sup> The result of the broad multi-dimensional UN peacekeeping operations have required the Security Council to implement resolutions, coordinate with other international actors within and outside the UN, and create principles and guidelines.<sup>14</sup> Human rights are at the core of UN peacekeeping

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8. *History of peacekeeping: The early years*, U.N. PEACEKEEPING, [http://www.un.org/en/peace keeping/operations/early.shtml](http://www.un.org/en/peace%20keeping/operations/early.shtml).

9. *Peace and security*, U.N. PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/peace.shtml>.

10. U.N. Under-Secretary-General for Peacekeeping Operations, United Nations Peacekeeping Principles: Principles and Guidelines, at 47 (January 18, 2008), [http://pbpu.unlb.org/pbps/Library/Capstone\\_Doctrine\\_ENG.pdf](http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf) [hereinafter Peacekeeping Principles] (the Security Council is authorized to establish a peacekeeping operation in Chapters VI, VII, and VIII of the UN Charter, although most peacekeeping operations are established under the Security Council’s Chapter VII powers; but the Security Council does not need to invoke a specific Chapter upon passing a resolution authorizing the deployment of UN Peacekeeping troops).

11. Peacekeeping Principles, *supra* note 10, at 21-22.

12. *Id.* at 8-9, 22-23.

13. *Peace and security*, *supra* note 9.

14. Peacekeeping Principles, *supra* note 10 (important UN Security Council resolutions regarding UN Peacekeeping missions include S.C. Res. 1325, (Oct. 31, 2000) (on women, peace and security); S.C. Res. 1612 (July 26, 2005) (on children and armed conflict); and S.C. Res. 1674 (April 28, 2006) (on protection of civilians in armed conflict)).

operations: “UN peacekeeping personnel— whether military, police, or civilian— should act in accordance with international human rights law False [p]eacekeeping personnel should strive to ensure that they do not become perpetrators of human rights abuses False [w]here they commit abuses, they should be *held accountable*.”<sup>15</sup>

By the end of 2011, there were fifteen UN peacekeeping operations and an additional sixteen peacekeeping operations that were directed and supported by the Department of Peacekeeping Operations.<sup>16</sup> These peacekeeping operations were deployed in four continents, with only one being in the Americas, the UN Peacekeeping Mission in Haiti.<sup>17</sup> The UN has been involved with Haiti since 1990, when the UN Observer Group for The Verification of Elections, upon the request of the provisional Haitian government, oversaw the preparation and holding of elections.<sup>18</sup> After conditions in Haiti worsened following a political coup in 1991, the UN attempted to establish an International Civilian Mission in Haiti along with Organization of American States,<sup>19</sup> which was unsuccessful.<sup>20</sup> The first deployment of a multinational force to Haiti to “facilitate the prompt return of the legitimate Haitian authorities, maintain a secure and stable environment in the country, and promote the rule of law” by the UN occurred in July 1994.<sup>21</sup> Various UN peacekeeping missions followed from 1994 through 2000. After an armed conflict occurred in the city of Gonzales and other towns, the Security Council passed Resolution 1542 creating MINUSTAH on June 1, 2004 because the situation in Haiti was deemed to threaten international peace and security.<sup>22</sup>

15. Peacekeeping Principles, *supra* note 10, at 14-15, 27 (emphasis added).

16. *Peacekeeping Fact Sheet*, U.N. PEACEKEEPING (Oct. 13, 2011), [http://www.un.org/en/peace keeping/resources/statistics/factsheet.shtml](http://www.un.org/en/peace%20keeping/resources/statistics/factsheet.shtml).

17. *Id.*

18. *MINUSTAH Background*, MINUSTAH: UNITED NATIONS STABILIZATION MISSION IN HAITI, <http://www.un.org/en/peacekeeping/missions/minustah/background.shtml> [hereinafter *MINUSTAH Background*].

19. *See generally* Organization of American States, <http://www.oas.org/en/about/purpose.asp> (the Organization of American States, OAS, works with the UN to promote democracy).

20. *MINUSTAH Background*, *supra* note 18.

21. *MINUSTAH Background*, *supra* note 18.

22. *Id.* (the previous UN missions to Haiti between 1994-2000 were: UNMIH, which assumed its functions in full in March 1995, the United Nations Support Mission in Haiti (UNSMIH), the United Nations Transition Mission in Haiti (UNTMIH), and the United Nations Civilian Police Mission in Haiti (MIPONUH) despite the some successes of these mission there were many setbacks because of the political crisis and instability); *see also Restoring a secure*

Some of the stated purposes of MINUSTAH included:

- 1) Support of the Transitional Government in securing and stabilizing the nation;
- 2) Assistance in monitoring, restructuring and reforming the Haitian National Police;
- 3) Assistance with restoring and maintaining the rule of law, public safety and public order in Haiti;
- 4) Support of the constitutional and political processes;
- 5) Assistance in organizing, monitoring, and carrying out free and fair municipal, parliamentary and presidential elections; and
- 6) Support the Haitian Transitional government and other human rights groups and institutions in their efforts to promote and protect human rights.<sup>23</sup>

The Security Council continuously reformed and adjusted the MINUSTAH mandate, to adapt to the changing circumstances and evolving requirements of Haiti's political, social, economic, and security circumstances.<sup>24</sup> On October 13, 2009, the Security Council extended MINUSTAH for another year to support the Haitian political process, to promote an all-inclusive political dialogue and national reconciliation, and to provide logistical and security assistance for the 2010 elections.<sup>25</sup>

Shortly thereafter, on January 12, 2010 the devastating 7.0 magnitude earthquake in Haiti leveled Port-au-Prince and left more than 220,000 dead, including UN personnel, and 1.5 million people homeless. This national disaster also impeded nation-building efforts, led to a greater political uncertainty, and further demoralized the Haitian economy and infrastructure.<sup>26</sup> The UN immediately launched emergency relief operations, with MINUSTAH acting as first responders, despite MINUSTAH's own losses.<sup>27</sup> Humanitarian efforts became a focus as a result of the earthquake, with "particular

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*and stable environment*, MINUSTAH: UNITED NATIONS STABILIZATION MISSION IN HAITI, <http://www.un.org/en/peacekeeping/missions/minustah> (MINUSTAH succeeded a Multinational Interim Force after the armed conflict in Haiti ceased and President Bertrand Aristide departed Haiti in exile).

23. *MINUSTAH Background*, *supra* note 18.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*; U.N. Secretary-General, Report of the Secretary General on the United Nations Mission Stabilization in Haiti, S/2010/200 (Feb. 22, 2010), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2010/200](http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/200).

attention to the needs of the most vulnerable, including *children*, women, the elderly and persons with disabilities.”<sup>28</sup> The Security Council approved resolution 1927 of June 4, 2010, which authorized a temporary deployment of an additional 680 MINSUTAH troops to focus on building the Haitian National Police and recognized the need for MINSUTAH to “assist the Government of Haiti in providing adequate protection of the population.”<sup>29</sup>

Within months of the earthquake, there was a deadly cholera outbreak in Haiti, which resulted in 6,477 deaths and 457,000 people infected.<sup>30</sup> News sources linked the cholera outbreak to UN peacekeepers, specifically peacekeepers from Nepal.<sup>31</sup> Approximately a year after the cholera outbreak, in September 2011, a cell phone video depicting UN peacekeeper troops assaulting a Haitian teenage boy was released.<sup>32</sup> Many Haitians called for the withdrawal of the peacekeeping troops; but Haitian president, Michel Martelly visited UN headquarters on September 23, 2011 requesting the UN to renew the MINUSTAH mandate and commitment to Haiti.<sup>33</sup> After President Martelly’s appeal, the Security Council, on October 14, 2011, extended

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28. Report of the Secretary General on the United Nations Mission Stabilization in Haiti, *supra* note 27. (emphasis added).

29. *Id.*

30. Matthew Mosk and Rym Momtaz, *Report: UN peacekeepers Caused Cholera Outbreak in Haiti*, ABC NEWS (Nov. 8, 2011), <http://abcnews.go.com/Blotter/report-caused-cholera-haiti/story?id=14904474#.TuvPbZizAUw>; Jon Swaine, *Haiti cholera outbreak linked to UN peacekeepers, UN admits*, THE TELEGRAPH (May 5, 2011, 1:21 AM BST), <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/haiti/8494066/Haiti-cholera-outbreak-linked-to-peacekeepers-UN-admits.html>.

31. Mosk, *supra* note 24; Swaine, *supra* note 24; *Haiti cholera ‘resembles South African strain’*, BBC NEWS (Nov. 1 2010, 20:19 ET), <http://www.bbc.co.uk/news/world-latin-america-11669079>.

32. *UN peacekeeping nations consider Haiti abuse case*, CBS NEWS (Sept. 8, 2011, 2:01 AM), <http://www.cbsnews.com/stories/2011/09/07/ap/latinamerica/main20103085.shtml>; *Uruguayan peace-keepers in Haiti accused of abuse*, BBC NEWS (Sept. 4, 2011, 22:54 ET), <http://www.bbc.co.uk/news/world-latin-america-14783538> [hereinafter *Uruguayan peacekeepers*].

33. Associated Press, *Haiti President notes UN errors, but says peacekeepers should stay in country*, THE WASHINGTON POST (Sept. 23, 2011), [http://www.washingtonpost.com/world/americas/haiti-president-notes-un-errors-but-says-peacekeeping-force-should-stay-in-country/2011/09/23/gIQALfLzrK\\_story.html](http://www.washingtonpost.com/world/americas/haiti-president-notes-un-errors-but-says-peacekeeping-force-should-stay-in-country/2011/09/23/gIQALfLzrK_story.html). (MINUSTAH mandate was originally end in 2005, however the Security Council renewed the mandate on June 22, 2005, *see generally* U.N. S.C. Rep. of Haiti Historical Chronology, Dec. 1990- Oct. 14, 2011, (Nov. 14, 2011) <http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.2713045/>).

its mandate of MINUSTAH for another year; however the Security Council decided to reduce the number of troops to 2,500.<sup>34</sup>

MINUSTAH has been able to accomplish important goals, such as the peaceful transfer of power and improving the overall security situation.<sup>35</sup> However, the cholera outbreak and the sexual abuse scandals, especially those involving children, have weakened the overall success of MINUSTAH. Although success of peacekeeping operations is never a guarantee, it is evident that success is largely based on the UN peacekeeping forces being legitimate and credible, especially in the “eyes of the local population.”<sup>36</sup> The sexual abuse and exploitation of children by UN peacekeeping personnel destroys the legitimacy and credibility of the UN’s operations.<sup>37</sup> Furthermore, all forms of sex with children below the age of consent are illegal and the Convention on the Rights of a Child (hereinafter CRC) proclaims that any child under the age of eighteen is entitled to protection from sexual exploitation and abuse.<sup>38</sup> Human rights violations by UN personnel destroys, damages, and undermines the UN’s image, mandates, and peacekeeping operations. Former UN Secretary-General, Kofi Annan, expressed this sentiment, “sexual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for. Men, women, and children displaced by conflict or other disasters are among the most vulnerable people on earth. They look to the United Nations and its humanitarian partners for shelter and protection.”<sup>39</sup> Consequently, the UN must take action against its personnel who violate its own

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34. Press Release, Security Council, Security Council Authorizes One-Year Extension of Haiti Stabilization Force, Also Approves Withdrawal Of Some 2,700 Troops, Police, U.N. Press Release SC/10411 (Oct. 14, 2011), <http://www.un.org/News/Press/docs/2011/sc10411.doc.htm>.

35. S. C. Res. 2012, S/Res/2012 (Oct. 14, 2011), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/2012\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2012(2011)).

36. Peacekeeping Principles, *supra* note 10, at 36-37.

37. See Cassandra Clifford, *UN peacekeepers and the Abuse of Children*, FOREIGN POLICY ASSOCIATION (AUG. 1, 2007), <http://foreignpolicyblogs.com/2007/08/01/un-peacekeepers-and-the-abuse-of-children> (the UN must ensure that the peacekeepers in the blue berets are actually protecting the children).

38. Corina Csáky, *No One to Turn To: The Under-Reporting of child sexual exploitation and abuse by aid workers and peacekeepers*, SAVE THE CHILDREN, 5 and 27 (2008), [http://www.un.org/es/psataskforce/docs/no\\_one\\_to\\_turn\\_under\\_reporting\\_of\\_child\\_sea\\_by\\_aid\\_workers.pdf](http://www.un.org/es/psataskforce/docs/no_one_to_turn_under_reporting_of_child_sea_by_aid_workers.pdf).

39. Muna Ndulo, *The United Nations Response to the Sexual Abuse and Exploitation of Women and Girls By Peacekeepers During Peacekeeping Missions*, 27 BERKELEY J. INT’L L. 127, 130 (2009); UN Secretary-General, *Investigation into sexual exploitation of refugees by aid workers in West Africa: Note of Secretary-General*, ¶ 3, U.N. Doc. A/57/465 (Oct. 11, 2002).

mandates, such as the prohibition of sexual violence, and international human rights and humanitarian law if MINUSTAH is to be remembered as a successful peacekeeping operation.

## II. SEXUAL VIOLENCE OF CHILDREN IN HAITI AND PEACEKEEPER IMPUNITY

Global sexual violence against women has been documented and reported on extensively. However, sexual violence against children has not been as prevalent in the media and when it is mentioned usually it only mentions girls and alongside sexual violence against women.<sup>40</sup> This paper is not attempting to downplay the atrocities of sexual violence against women, but rather highlight a group of individuals, that also suffer from sexual acts committed against them, the children.<sup>41</sup> Children, boys and girls, are particularly vulnerable, and in need of greater protection from those that would physically, emotionally, and mentally harm them. The harms that result from sexual violence on children are everlasting and must be prevented, especially when the harms are committed by those individuals who were sent and employed to protect and defend them from such evil.<sup>42</sup> Unfortunately, sexual abuses against women and children occur because the women and children often have to trade sex for food and other necessities.<sup>43</sup>

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40. *"Nobody Remembers Us": Failure to Protect Women's and Girls' Right to Health and Security in Post-Earthquake Haiti*, HUMAN RIGHTS WATCH (2011) (the use of "women and girls" is prevalent throughout the document).

41. Csáky, *supra* note 38, at 18 (citing a Medcins Sans Frontieres facility statistics, "significant proportion of the victims of sexual violence were girls"); *see also Treating sexual violence in Haiti: An interview with Olivia Gayraud, MSF Head of Mission in Port-au-Prince*, MEDECINS SANS FRONTIERES: DOCTORS WITHOUT BORDERS (October 30, 2007), <http://web1.doctorswithoutborders.org/news/article.cfm?id=2135>.

42. *Child Sexual Abuse*, AMERICAN HUMANE ASSOCIATION (2011), <http://www.americanhumane.org/children/stop-child-abuse/fact-sheets/child-sexual-abuse.html> (effects of sexual abuse extend far beyond childhood); *Facts for Families: Child Sexual Abuse*, AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY (March 2011), [http://www.aacap.org/galleries/FactsForFamilies/09\\_child\\_sexual\\_abuse.pdf](http://www.aacap.org/galleries/FactsForFamilies/09_child_sexual_abuse.pdf) (long-term emotional and psychological damages of sexual abuse can be devastating to the child).

43. Csáky, *supra* note 38, at 3-4, 50-52; *see also* Athena R. Kolbe & Royce A. Hutson, *Human Rights Abuse and Other Criminal Violations in Port-au-Prince, Haiti: A Random Survey of Households*, 368[9538] *THE LANCET*, 864, 868 (2006).

### A. Reports and Allegations of Sexual Abuse by Peacekeepers

The MINUSTAH peacekeeping mission in Haiti has had a series of reports and allegations of misconduct and abuse by peacekeepers.<sup>44</sup> The most notable are the sexual abuse scandals in 2007 and 2011.<sup>45</sup> Widespread accusations of peacekeepers having sex with minors led to the deportation of approximately 100 Sri Lanka peacekeeping troops from Haiti in 2007.<sup>46</sup> Approximately three years later in September 2011, a cell phone video was released of an eighteen-year-old boy who was sexually assaulted by UN peacekeepers from Uruguay.<sup>47</sup> The video provided evidence of the reports and accusations of the sexual abuse of children by UN peacekeepers to the international community.<sup>48</sup> There have been reports of peacekeeping troops, sometimes called humanitarian men, who offer girls, between the ages of thirteen to fifteen years old, money, from \$1.00-\$3.00(US), if the girls will perform sexual acts.<sup>49</sup>

Girls, between the ages of ten and fourteen years old have been subjected to the touching or fondling of their breasts by peacekeepers and the men exposing their penises.<sup>50</sup> In 2007, a report of UN peacekeepers having sex with Haitian girls, as young as thirteen years old, for \$1.00(US) and approximately 100 Sri Lankan soldiers were systematically raping women and *girls* was released.<sup>51</sup>

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44. Matthew Mosk, et al., *Haiti Outrage: UN Soldiers from Sexual Assault Video Freed*, ABC NEWS (JAN. 9, 2012), <http://abcnews.go.com/Blotter/soldiers-held-sex-assault-freed/story?id=15306826#.Tws0UJizCEM>.

45. See, e.g., CBS NEWS; BBC NEWS, *supra* note 32.

46. MacFarquhar, *supra* note 2.

47. Herz, *supra* note 3 (an individual who is eighteen-years old is in many countries, like the United States and Haiti, is no longer considered a "child" but rather an adult. However, the video does depict sexual violence against a teenager committed by UN peacekeeper troops from Uruguay and is illustrative of the difficulties facing prosecution of UN peacekeepers).

48. *Haiti: Victim of UN peacekeeper Abuse Audio Testimony*, DEFEND HAITI (DEC. 15, 2011), <http://defend.ht/politics/articles/defense/2228-haiti-victim-of-un-peacekeeper-abuse-audio-testimony>; see also *Students Take Champs de Mars in Protest against UN peacekeepers*, DEFEND HAITI (SEPT. 15, 2011), <http://defend.ht/news/articles/community/1685-students-take-champ-de-mars-in-protest-against-un-peacekeepers> (the video is described as the "hair breaking the camel's back").

49. Newman, *supra* note 1; Csáky, *supra* note 38, at 15 (it is important to note that all forms of sex with children below the age of consent are illegal; the UNCRC proclaims that any child under the age of 18 is entitled to protection from sexual exploitation and abuse).

50. Csáky, *supra* note 38, at 5.

51. *UN peacekeepers accused of sexual assault in Haiti*, TAMIL GUARDIAN (SEPT. 09, 2011), <http://tamilguardian.com/article.asp?articleid=3469>; Carol J. Williams, *U.N. confronts another sex scandal: In Haiti, more than 100 peacekeepers from Sri Lanka have been deported on*

The 114 Sri Lankan peacekeeping troops who were repatriated in November 2007 were found to systematically rape and exploit girls almost every night and at almost every location where they were deployed.<sup>52</sup> If the girls had not been raped, they had been sexually exploited, trading sexual acts for small amounts money, food, and mobile phones.<sup>53</sup> Young girls are not the only victims of sexual assault. In September 2011, a one-minute cell-phone video depicted four men in the distinctive sky-blue berets laughing while they assaulted a young man, who was being held down on a mattress.<sup>54</sup> The four men were identified as Uruguayan peacekeepers and the boy in the video was identified as Johnny Jean, an eighteen year-old Haitian.<sup>55</sup> However, the quality of the video is poor and the men speaking Spanish was gargled, which led one media outlet, CNN, to conclude that the video did not show a sex act.<sup>56</sup>

There are difficulties in determining who sexually abuses the children. In countries like Haiti, there are many international humanitarian organizations, and some of the reports only indicate the perpetrator as a “man who works for an international organization.”<sup>57</sup> This inability to identify UN peacekeepers from other “humanitarians” does not deprive the UN peacekeepers from their duty to protect these vulnerable children from sexual exploitation.<sup>58</sup> UN reports have demonstrated that peacekeepers have a higher incident of allegations of sex with minors than other UN organizations.<sup>59</sup> Despite the difficulties of reporting, the overarching

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*suspicion of illicit liaisons*, LOS ANGELES TIMES (DEC. 15, 2007), <http://articles.latimes.com/2007/dec/15/world/fg-haitisex15>. (emphasis added).

52. *UN confirms sex charges*, *supra* note 4.

53. *Id.*

54. Herz, *supra* note 3.

55. *Criminal Complaint Filed Against UN peacekeepers for Sexually Assaulting Young Man*, DEFEND HAITI (SEPT. 1, 2011), <http://www.defend.ht/news/articles/crime/1619-criminal-complaint-filed-against-un-peacekeepers-for-sexually-assaulting-young-man>.

56. Rafael Romo, *Uruguayan peacekeepers in Haiti investigated for alleged assault*, CNN WORLD (SEPT. 5, 2011), <http://www.cnn.com/2011/WORLD/americas/09/04/haiti.peacekeepers..assault/index.html?iref=allsearch>.

57. Csáky, *supra* note 38, at 7 (a man who works for an international organization (*sic*) gave 400 Haitian gourdes to a 13-year-old boy and...raped him).

58. *Id.*; U.N. DEP'T OF PEACEKEEPING OP. & CHILDREN AND ARMED CONFLICT, Volume I—Child Protection: Child Protection in United Nations Peacekeeping, at 17 (Spring 2011).

59. Csáky, *supra* note 38, at 8; U.N. Secretary General, *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, A/59/782 (15 April 2005); A/60/861 (24 May 2006); and A/61/957 (15 June 2007).

problem with reports and accusations of sexual abuse against children by peacekeepers is the failure to report the crime.

The reports of sexual abuse of children by peacekeepers can be difficult to obtain because of either fear of retaliation or not being allowed in the villages.<sup>60</sup> Furthermore, the lack of faith in authorities, local police, and the court system prevents reporting of abuse.<sup>61</sup> The failure to report often stems from the fact that the people who commit rape and acts of sexual violence against children are part of the same organization, "the same people," to whom reports should be made.<sup>62</sup> Another obstacle to the reporting of sexual abuse at the hands of peacekeepers is corruption between the organization and the local authorities or government, which results in a lack of accountability, impunity, and victims without any sense of justice.<sup>63</sup> The underreporting of sexual abuse because of corruption, fear, or lack of trust is not constrained to Haiti, but has been cited in other peacekeeping missions, "many UN agencies False working here feel they cannot be touched by anyone."<sup>64</sup> As a result, the abuse continues and the UN has incomplete information, which could be vital to the training of peacekeepers regarding standard of conduct and the effectiveness of monitoring through the Office for Internal Oversight Services.

### B. *Response of the UN Towards Allegations*

The United Nations, in keeping with its 'zero-tolerance' policy regarding the sexual abuse by peacekeepers, has assisted Sri Lankan and Uruguay governments in legal proceedings against the

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60. Csáky, *supra* note 38, at 13 (young girl in Haiti stated that the abused child would not go to the organization out of fear of being "kicked out" of the village and a young boy in Haiti reported having a fear of being killed by the perpetrator.). See Clifford, *supra* note 37 ("however one must note that children who have been repeatedly victimized, especially by figures of authority, often do not report their abuse, or abusers.").

61. Csáky, *supra* note 38, at 14 (young Haitian boy expressing that the police are afraid of the Peacekeepers and cannot "do" anything).

62. *Id.* at 16 (young Haitian girl stating that the people raping us (sic) and the people in the office are the same people).

63. Csáky, *supra* note 38, at 16. (aid worker in Haiti stating that whether the local authorities or government take action against a humanitarian or security organization depends on who the victim is, where the victim works and whether or not the government is receiving money).

64. *Id.* (citing aid worker in Côte d'Ivoire).

offenders.<sup>65</sup> The UN's Office of Internal Oversight Services concluded in the matter of the Sri Lankan incident that the charges brought by the government should include rape, because the victims were under eighteen years old.<sup>66</sup> After the release of the cell phone video to various media outlets the UN acknowledged the misconduct by the UN peacekeepers; but, stated that the "acts of few should not tarnish those who have served in Haiti with distinction."<sup>67</sup> Additionally, Elaine Nabaa, a spokesperson for MINUSTAH, publically stated that the UN has a 'zero-tolerance' policy regarding sexual abuse by its peacekeepers and "stressed that the UN does its utmost to prevent such abuses from occurring, including thorough training before troops are deployed to sensitize them to respect human rights and the customs, traditions and culture of the host country."<sup>68</sup> Additionally, the Commander of MINUSTAH, Major General Luiz Ramos wrote a letter to the Haitian people apologizing for "the unfortunate events caused by a small number of soldiers."<sup>69</sup> He echoed the sentiments expressed by Ms. Nabaa, and assured the people of Haiti that "[they] will continue to investigate allegations of misconduct False and that any wrongdoing [would] be punished."<sup>70</sup> As a result, the five peacekeepers that were identified in the cell-phone video were returned to Uruguay and to face prosecution by the Uruguayan government or military tribunal.<sup>71</sup> The former Uruguayan

65. *UN confirms sex charges, supra* note 4; *Uruguay to probe alleged sexual misconduct by its UN peacekeepers in Haiti*, UN NEWS CENTRE (Sept. 9, 2011), <http://www.un.org/apps/news/story.asp?NewsID=39499> [hereinafter *Uruguay to probe*].

66. *UN confirms sex charges, supra* note 4 (both the ICC and the UN consider rape as a "war crime." Although Haiti is not currently in conflict or in a state of war, the peacekeepers are military men and raped women of the country that they are occupying, thus the ICC could exercise jurisdiction over these atrocities. *See*, Rome Statute of the International Criminal Court, art.5(1)(c), 8(2)(b)(xxii), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]).

67. *Uruguay to probe, supra* note 65.

68. *Id.*; *Uruguayan peacekeepers, supra* note 32.

69. *UN peacekeeper Commander Letter to Haitian People Regretting Rape*, DEFEND HAITI (SEPT. 10, 2011), <http://defend.ht/politics/articles/defense/1661-un-peacekeeper-commander-letter-to-haitian-people-regretting-rape>.

70. *Id.*

71. *Brazil plans Haiti peacekeeping withdrawal*, BBC NEWS (Sept. 06, 2011), <http://www.bbc.co.uk/news/world-latin-america-14812500>; *Uruguayan Judge Sentences 5 UN peacekeepers to Prison for Rape*, DEFEND HAITI (Sept. 19, 2011), <http://defend.ht/politics/articles/international/1699-uruguayan-judge-sentences-5-un-peacekeepers-to-prison-for-rape>; *Five Uruguayan marines sentenced to jail for 'gross misconduct' in Haiti*, MERCOPRESS (SEPT. 20, 2011), <http://en.mercopress.com/2011/09/20/five-uruguayan-marines-sentenced-to-jail-for-gross-misconduct-in-haiti>

peacekeepers were later released when authorities could not obtain the testimony of the victim; however, the associated press has talked to the young man via cell-phone, and he stated that no one had asked him to testify.<sup>72</sup> Currently the charges against the five men are fraternizing with civilians inside a military base.<sup>73</sup>

The UN is unable to discipline the offending troops when peacekeepers are returned to their home countries for prosecution.<sup>74</sup> The UN maintains that it would be “disappointed if only administrative and disciplinary actions” are taken against offending peacekeepers.<sup>75</sup> Previous offenders have been ordered to pay financial support for any children fathered by the peacekeepers, and are banned from serving in other UN missions.<sup>76</sup> In addition, once the UN peacekeepers are returned to their home country for misconduct, or sexually abusing children, they face dishonorable discharge and lose retirement benefits.<sup>77</sup>

An order for financial support if a child results from the sexual abuse and dishonorable discharge from military service is not sufficient punishment for rape, or the solicitation of sex from children. The prosecution and punishment of those who commit an act of sexual violence varies between States. In Uruguay the age of consent is fifteen and if the victim is between the ages twelve and fifteen, there is a rebuttable presumption that violence was involved and the defendant must prove consent.<sup>78</sup> However, consent is not a defense if

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(Uruguayan judge, Washington Vigliola, investigated the charges and sentenced the five men to prison).

72. Evans Sanon, *Uruguay Frees Soldiers in Haiti Abuse Trial*, ASSOCIATED PRESS (Jan. 10, 2012), available at [http://seattletimes.nwsources.com/html/nationworld/2012199058\\_aplturuguayhaitiuninvestigation.html](http://seattletimes.nwsources.com/html/nationworld/2012199058_aplturuguayhaitiuninvestigation.html).

73. *Id.*

74. *Sri Lanka 'abused Haitians'*, BBC NEWS (Nov. 2, 2007), [http://news.bbc.co.uk/2/hi/south\\_asia/7075866.stm](http://news.bbc.co.uk/2/hi/south_asia/7075866.stm) (Sri Lankan army spokesperson, Brigadier H.A. Nihal Hapuarachchi has stated that the 114 Sri Lankan soldiers involved in the continuous rape and prostitution of Haitian girls were prosecuted and found guilty in Haiti's sexual abuse case, but the Haitian Lawyers Leadership Network maintains that the perpetrators went free, unpunished); Chris Celius, *Haiti-Rape Scandal: Peacekeepers Brought Revolting Sexual Abuse Culture, not Peace*, FOREIGN POLICY ASS'N (SEPT. 13, 2011), <http://foreignpolicyblogs.com/2011/09/13/haiti-rape-scandal-peacekeepers-brought-inherent-sexual-abuse-culture-not-peace/>.

75. *UN confirms sex charges*, *supra* note 4.

76. Press Release, Security Council, Security Council Authorizes One-Year Extension of Haiti Stabilization Force, Also Approves Withdrawal Of Some 2,700 Troops, Police, U.N. Press Release SC/10411 (Oct. 14, 2011), <http://www.un.org/News/Press/docs/2011/sc10411.doc.htm>.

77. Romo, *supra* note 56.

78. Código Penal [Cód. Pen.] [Criminal Code] Ley 17.514, art. 272, 267 (Uru.).

the victim is under the age of twelve.<sup>79</sup> Furthermore, the Uruguayan criminal code contains a charge for the corruption of minors if they are below the age of eighteen and are “manipulated” into having sexual relations.<sup>80</sup> If an individual is under fifteen years old, only the parent(s) or guardian can bring a lawsuit, unless the individual is an orphan or the accusation is against the parent or guardian.<sup>81</sup>

Under the Sri Lanka Penal Code, an individual who is guilty of soliciting a child, a person under the age of eighteen, for sexual abuse is subject to a fine, imprisonment up to ten years, or both.<sup>82</sup> Furthermore, the age of consent in Sri Lanka is sixteen.<sup>83</sup> Although Sri Lankan law provides for the general protection against violence, “no person shall be subject to harassment, or inhumane and cruel treatment or punishment,” rape is narrowly defined as sexual intercourse with a women in five specific scenarios, three of which are: (1) Sexual intercourse without consent; (2) Sexual intercourse even with consent where the woman is in lawful or unlawful detention or where consent is obtained through intimidation, threat, or force; and (3) Sexual intercourse with or without consent if the woman is under 16 years of age unless the woman is the accused man’s wife, she is over 12 years of age, and she is not judicially separated from the accused.<sup>84</sup> However, the 1998 amendments to the Sri Lankan Penal Code have added the offense of statutory grave sexual abuse, which pertains to an act of sexual gratification that does not amount to rape when consent is not given or when the other person is under the age of sixteen.<sup>85</sup> Pertaining to sentencing, the 1995 amendments of the Penal Code included minimal sentencing for rape and gross sexual abuse; however, a High Court found these minimum sentences to violate Sri Lanka’s constitution.<sup>86</sup> According to a report

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79. *Id.* art. 272(1).

80. *Id.* art. 274.

81. *Id.*, at art. 274.

82. Penal Code No. 16 of 2006 § 360E(1)(a) (Sri Lanka), available at <http://www.oecd.org/dataoecd/38/0/46817262.pdf>.

83. Penal Code, *supra* note 82, at art. 363(e) (as amended by Act No. 22 of 1995; the age of consent was raised from twelve in 1995 by this amendment).

84. Sri Lankan Constitution [Const.] Art. 11; Penal Code, *supra* note 82, at art. 363.

85. Penal Code, *supra* note 82, art. 365 (B)(1)(a)(aa).

86. *Current Legal Framework: Rape and Sexual Assault in Sri Lanka*, INT’L MODELS PROJECT ON WOMEN’S RIGHTS (AUG. 15, 2011), [http://www.impowr.org/content/current-legal-framework-rape-and-sexual-assault-sri-lanka#\\_ftn19](http://www.impowr.org/content/current-legal-framework-rape-and-sexual-assault-sri-lanka#_ftn19) [hereinafter *Current Legal Framework*](citing High Court of the North Central Province, Case No.HC.333/04 Supreme Court (30/2008) (Sri Lanka) *ruling that the mandatory sentence conflicts with arts. 4(c), 11, and 12 of the Constitution*)).

by the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the result of the High Court's decision led to suspended or reduced sentences and increased impunity in cases of rape.<sup>87</sup>

The Penal Codes of Uruguay and Sri Lanka demonstrate the inequities that result from member States prosecuting peacekeepers accused of committing acts of sexual violence; the results of prosecution of peacekeeper offenders vary, despite the equally damaging effects of their egregious acts, the committing of a war crime: rape and sexual violence against children.<sup>88</sup>

### III. PROSECUTION OF PEACEKEEPERS BY THE ICC VS. STATUS-OF-FORCES AGREEMENTS AND MEMORANDUM OF UNDERSTANDINGS

Most international law and international criminal tribunals that address sexual violence, such as rape, focus on acts occurring before or during conflict.<sup>89</sup> Haiti is not engaged in a war or conflict; therefore, if the ICC were to exercise jurisdiction<sup>90</sup> regarding the rape of Haitian children by UN peacekeepers, it would be a historic exercise of jurisdictional authority. The ICC's decision to prosecute the alleged offenders for rape, especially the rape of children, would be a strong indicator that sexual violence directed towards children will not be tolerated by the international community and the alleged perpetrators will be held accountable.<sup>91</sup> In the alternative, the

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87. *Current Legal Framework*, *supra* note 86 (art. 364 specifies terms of imprisonment from seven to twenty years and an order of compensation); *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, at THE WOMEN AND MEDIA COLLECTIVE, 41 (July 2010), available at [http://www.womenandmedia.net/legal\\_statements/Sri\\_Lanka\\_NGO\\_Shadow\\_Report\\_to\\_CEDAW\\_July\\_2010.pdf](http://www.womenandmedia.net/legal_statements/Sri_Lanka_NGO_Shadow_Report_to_CEDAW_July_2010.pdf).

88. *UN confirms sex charges*, *supra* note 4 (UN Office of Internal Oversight Services stating that acts of sexual abuse and exploitation of persons under eighteen years old is rape and a war crime).

89. Geneva Convention Relative to the Prosecution of Civil Persons in Times of War (Aug. 12, 1949) art. 27, 75 U.N.T.S. 287-88, 6 U.S.T. 3516 (International Criminal Tribunal for Rwanda and International Criminal Tribunal for the former Yugoslavia are examples of the prosecution of sexual violent acts).

90. See discussion *infra* part III(C)(1) (in the alternative, ICC could be seized of the jurisdiction in this matter through a U.N. Security Council Resolution, Rome Statute, *supra* note 66, at art. 13(b)).

91. See e.g. Jan Rachel Reyes, *Comment: Deliver Us from Our Protectors: Accountability for Violations Committed by Humanitarian Aid Staff Against Refugee Women and Children*, 44 U.S.F. L. Rev. 211, 223 (2009) (proposing that separate tribunals should be created for enforcing international humanitarian law and passage of Resolution 1820 allows ICC to claim jurisdiction

perpetrators could be viewed as violating a recognized human right and basic principles of international law.

A. *Sexual Violence of Children is a Violation of Human Rights*

The Rome Statute contemplates human rights violations, or crimes against humanity, which includes “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.”<sup>92</sup> Though the Rome Statute was not entered into force until 2002,<sup>93</sup> prosecution of individuals at the international level on the crime of rape occurred as early as 1998 in the International Criminal Tribunal for Rwanda, when Jean Paul Akayesu<sup>94</sup> was convicted for crimes against humanity for his encouragement of the rape of Tutsi women.<sup>95</sup> The conviction, which was upheld by the Appeals Chamber, was historic because it was the first time in international legal history that a defendant was tried and convicted by an international tribunal for the crime of rape. It “paved the way for later prosecutions of sexual crimes by international tribunals.”<sup>96</sup>

The principle of *jus cogens* is prevalent in international law and must be abided by every State and actor in international law.<sup>97</sup> *Jus cogen* has a moral undertone, with foundations in natural law.<sup>98</sup> Natural law is universal;<sup>99</sup> it applies to the entire human race,<sup>100</sup> and

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on crimes of sexual violence; although the comment focuses on sexual violence against refugee women and children a parallel can be made with the situation in Haiti).

92. Rome Statute, *supra* note 66, at art. 7(1)(g).

93. See generally Rome Statute, *supra* note 66, available at <http://untreaty.un.org/cod/icc/index.html>.

94. Prosecutor v. Akayesu, case no. ITCR 96-4-T, Trial (Int'l Crim. Trib. For Rwanda, Dec. 3, 2003).

95. James R. McHenry III, *The Prosecution of Rape Under International Law: Justice That is Long Overdue*, 35:1269 VAND. J. TRANSNAT'L L. 1269, 1272 (2002) (Akayesu was also convicted for the crime of genocide).

96. McHenry, *supra* note 95, at 1272 (referencing comments made by Prosecutor Louis Arbour, Press Release, ICTY Office of the Prosecutor, Statement by Justice Louis Arbour, ICTY Doc. CC/PIU/342-E (Sept. 4, 1998)).

97. Alfred Von Verdeross, *Forbidden Treaties in International Law: Comments on Professor Garner's Report in "The Law of Treaties,"* 31 Am. J. Int'l. L. 571, 572-573 (1937); Alfred Von Verdeross, *Jus Dispositivism and Jus Cogens in International Law*, 60 Am. J. Int'l. L. 55, 57-60 (1966).

98. K. Lee Boyd, *Universal Jurisdiction and Structural Reasonableness*, 40 TEX. INT'L L.J. 1, 38-39 (2004).

99. *Id.*

“must be embraced as a premise for legally cognizable human rights.”<sup>101</sup> Human rights, which “must be protected everywhere man goes,” and are “rooted in the conscious and reason of mankind though the ages” are also founded in natural law.<sup>102</sup> Understanding that human rights are an international obligation with foundations in natural law and *jus cogens* provides for an *erga omnes* obligation by the States.<sup>103</sup>

Rape is a violation against human rights.<sup>104</sup> International courts and tribunals have previously held that rape is both a preemptory norm of international law, a *jus cogens*, and an *erga omnes* obligation.<sup>105</sup> Since rape has been recognized by international courts and tribunals as an *erga omnes* obligation and a *jus cogens* norm, the lack of prosecution for these crimes is astounding considering if the agreements between the member States and the UN, or in the alternative, between the UN and Haiti, did not provide for the prosecution of these crimes, the treaties would be void.<sup>106</sup> When States agree to supply troops and aid on the behalf of the UN, they agree to participate in accordance with prescribed international standards, which exist among all contracting treaties and the *erga omnes* obligation arises.<sup>107</sup> Although the treaties provided for the prosecution of those who commit violations of domestic and international law,<sup>108</sup> the unwillingness or lack of prosecution by the States, should also be considered as a violation of an *erga omnes* obligation and the ICC could seize prosecution.<sup>109</sup> Rape, or sexual

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100. James Fox, *Natural Law*, 9 THE CATHOLIC ENCYCLOPEDIA 150, 152 (Charles G. Herbermann, ed., 1910).

101. Boyd, *supra* note 92, at 38.

102. Brief for Amicus Curie Defense for Children International-USA, Thompson v. Oklahoma, 1987 WL 881446, 17-18 (1987) (No. 86-6169)(quoting Judge Tanaka dissenting opinion in the South West Africa Cases).

103. Dean Adams, *The Prohibition of Widespread Rape as a Jus Cogens*, 6 SAN DIEGO INT'L L.J. 357, 364 (2005) (various international legal instruments including the UN Charter).

104. *See id.* at 364.

105. Prosecutor v. Rurundzija, Case No. IT-95-17/1-T, Judgment, ¶¶ 163, 171 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998); Adams, *supra* note 96, at 362 & 385; Barnaby Mason, *Rape: A Crime Against Humanity*, BBC NEWS (Feb. 22, 2001, 19:11 GMT) <http://news.bbc.co.uk/2/hi/europe/1184763.stm>.

106. Vienna Convention On the Law of Treaties, May 23, 1969, 1155 U.N.T.S.331, at art. 53 and 54 (*jus cogen* norms trump contrary treaty law).

107. Karl Zemanek, *New Trends in the Enforcement of Erga Omnes Obligations*, 4 MAX PLANCK YRBK UN L. 42, 6-10 (2000).

108. Agreement, *supra* note 6 at art. 51(b).

109. Rome Statute, *supra* note 66, at art. 17 (ICC has jurisdiction when State is unwilling or unable to prosecute).

violence, is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, acts to traffic, or acts otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.<sup>110</sup> When a child or minor is sexually abused or assaulted, it is definitional rape because children cannot legally consent to the sexual act.<sup>111</sup> Sexual acts that do not involve force, or threat of force, or very young children are still punishable.<sup>112</sup> The United States has criminalized sexual acts that are considered "less serious" than rape because "the perpetrator did not threaten the victim, and where the victim is between twelve and sixteen and the victim is at least four years younger than the accused."<sup>113</sup> Therefore, the sexual abuse of children, regardless of age, is a criminal act and a human rights violation.<sup>114</sup>

The Universal Declaration of Human Rights (UNDHR) contains a proposition that "no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." This should also extend to the sexual abuse of minors, or the solicitation of sexual acts by minors.<sup>115</sup> Courts have defined degrading treatment as, "that which grossly humiliates a person before other or forces the person to act against his/her will or conscience, or incites fear, anguish, or inferiority;"<sup>116</sup> as stated above, rape is a nonconsensual sexual act, and therefore clearly constitutes degrading treatment. Furthermore, soliciting children to perform sexual acts in exchange for money or necessities is not only degrading, but also has everlasting effects on the sexually exploited children. "These children are often unable to develop healthy affectionate relationships later in life, have sexual

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110. *World Report on Violence and Health*, WORLD HEALTH ORGANIZATION 149 (Oct. 3, 2002) available at [http://whqlibdoc.who.int/publications/2002/9241545615\\_chap6\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_chap6_eng.pdf).

111. Also known as statutory rape, defined by the US Dept. of Justice, when an individual has "consensual" sexual relations with an individual who is not old enough to legally consent, below the age of majority or the statutory age of consent. See Karyl Troup-Leasure and Howard N. Snyder, *Statutory Rape Known to Law Enforcement*, OFFICE OF JUSTICE PROGRAMS, U.S. DEPT. OF JUSTICE (AUG. 2005) pg.2, available at <https://www.ncjrs.gov/pdffiles1/ojdp/208803.pdf>.

112. *United States v. Jennings*, 438 F. Supp. 2d 637, 644 (E.D. Va. 2006) *aff'd*, 496 F.3d 344 (4th Cir. 2007).

113. *Id.*; 18 U.S.C. § 2243 (1986).

114. *Child protection from violence, exploitation and abuse*, UNICEF, [http://www.unicef.org/protection/57929\\_58006.html](http://www.unicef.org/protection/57929_58006.html).

115. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

116. *Wiwa v. Royal Dutch Petroleum Co.*, 2002 U.S. Dist. LEXIS 3293 (S.D.N.Y. Feb. 22, 2002) (citing *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) 65-67 (1978)).

dysfunctions, and have a tendency to become sexual abusers as adults.”<sup>117</sup>

Additionally, sexual violence against children is in contravention with UNICEF’s CRC, children are to be protected from “all forms of sexual exploitation and sexual abuse.”<sup>118</sup> Thus, the UN peacekeepers are not only violating the protocols and policies of the UN missions, but also the United Nation’s own resolutions, the UNDHR and the CRC. When UN peacekeeper troops engage in sexual acts with children it violates their respective State law,<sup>119</sup> in addition to international law and principles. If the States are “unwilling” or “unable” to prosecute and/or investigate the atrocities committed by their military members, the international community must act if the UN and its peacekeeping missions are to retain legitimacy.

#### B. *Agreements Between States and the UN*

The goal of the UN is to maintain peace within the world and often requires the deployment of peacekeeping missions.<sup>120</sup> In order to accomplish the goals of the UN, member States agree to supply peacekeeping missions with: “(1) military units/sub-units/elements (personnel and equipment organized and trained to fulfill a task or mission); (2) specialized personnel, both civilian and military, able to perform specific functions; (3) material and equipment; and (4) services.”<sup>121</sup> The UN has proclaimed, “our military and police personnel are first and foremost members of their own national service and are then seconded to work with the UN.”<sup>122</sup> This creates a discrepancy because the troops are originally under the directive of their State, but upon serving in a UN Peacekeeping operation, the troops must abide by certain international provisions, including respect for international humanitarian law, which forbids the rape of

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117. *United States v. McGarity*, 2012 U.S. App. LEXIS 2383 (11th Cir. Fla. Feb. 6, 2012).

118. Convention on the Rights of the Child, art. 34, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

119. *See supra* part II(B).

120. U.N. Secretary-General, *An Agenda for Peace Preventative diplomacy, peacemaking and peace-keeping*, ¶¶ 15, 20, U.N. Doc. A/47/277-S/24111 (June 17, 1992).

121. U.N. Dept. of Peacekeeping Operations, Handbook on United Nations Multidimensional Peacekeeping Operations (Dec. 2003), [http://www.peacekeepingbestpractices.unlb.org/Pbps/library/ Handbook%20on%20UN%20PKOs.pdf](http://www.peacekeepingbestpractices.unlb.org/Pbps/library/Handbook%20on%20UN%20PKOs.pdf) [hereinafter Handbook].

122. *Troop and police contributors*, UNITED NATIONS PEACEKEEPING (2012), <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>.

women and *children*, but are not subject to international law.<sup>123</sup> Prior to member States offering their military troops in service to the UN, the State and the UN form of a Memorandum of Understanding (hereinafter MOD), which details resources provided, response times, and conditions of deployment.<sup>124</sup>

In addition to the MODs, the UN also forms Status-of-Forces Agreements (hereinafter SOFA) with host States where UN military personnel, like UN peacekeeper troops, are to be deployed.<sup>125</sup> Within the SOFA is a clause regarding the privileges and immunities of peacekeeping operations. The general rule is: “basic privileges and immunities of a [UN] peacekeeping operation False flow from the Convention of the Privileges and Immunities of the [UN].”<sup>126</sup> The Convention of the Privileges and Immunities of the UN (hereinafter CPIUN) contains a clause that indicates immunities are not for the benefit of individuals themselves, but exist to “safeguard the independent exercise of their functions in connection with the [UN].”<sup>127</sup> A Member has a duty to waive immunity of its representative where the “immunity would impede the course of justice, and it can be waived without prejudice.”<sup>128</sup> To date, a Member State has not exercised the waiver option, but since the immunities provisions are functional, applying to “words spoken and written and to False acts performed by them in their official capacity,”<sup>129</sup> when a UN peacekeeper commits a crime, he is not acting within his official capacity and the issue of immunity would not be implicated.<sup>130</sup>

As stated in Part I, MINUSTAH was established in 2004 by Security Resolution 1542.<sup>131</sup> As part of the Resolution, the UN provided for the protection and promotion of human rights,

123. Handbook, *supra* note 121 (emphasis added).

124. *Id.*

125. U.N. Secretary-General, Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects: Rep. of The Secretary General, ¶34 G.A. Res. 45/76, U.N. Doc. A/45/594 (Oct. 9, 1990).

126. *Id.*

127. Convention on the Rights and Privileges of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15 [hereinafter CPIUN].

128. *Id.*

129. Paul C. Szasz & Thordis Ingadottir, *The UN and the ICC: The Immunity of the UN and Its Officials*, 14 LEIDEN J. OF INT’L L 868, 872 (2001) available at [http://www.pict-pcti.org/publications/ICC\\_paprs/ICCUN.pdf](http://www.pict-pcti.org/publications/ICC_paprs/ICCUN.pdf) (citing to CPIUN, ¶ 22(b)).

130. Szasz & Ingadottir, *supra* note 129, at 880.

131. *MINUSTAH Background*, *supra* note 18.

particularly women and *children*.<sup>132</sup> The SOFA between Haiti and the UN provides that the CRC applies and that “MINUSTAH and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the . . . Agreement.”<sup>133</sup> It is undeniable that rape and sexual assault of children is inconsistent with a peacekeeper’s duty to keep children safe.<sup>134</sup>

The SOFA further provides that all members of MINUSTAH “shall be immune from legal process in respect of False all acts performed in their official capacity.”<sup>135</sup> It is certain that UN peacekeepers who commit acts of sexual violence on children is not within the scope and duties of MINUSTAH, and thus not protected by the immunities clause.<sup>136</sup> However, if military members of MINUSTAH, the Peacekeeper forces, commit a criminal act, the SOFA provides that offenders are subject to exclusive jurisdiction of their respective States.<sup>137</sup> The treatment of rape, sexual assault and violence towards children in domestic penal codes<sup>138</sup> are treated differently and justice becomes inequitable.<sup>139</sup> The Haitian government granted broad immunity to MINUSTAH members for crimes committed in Haiti and provided in the SOFA that military members of MINUSTAH would be under the exclusive jurisdiction of their home country;<sup>140</sup> thus the accused will be held accountable under the laws of their respective States and not international law.

Following the dismissal of charges against the Uruguayan troops and the sexual assault of three teenagers by Pakistani UN troops in January 2012, Senator Youri Latortue, one month later, requested that the Senate pass a resolution to lift the immunity of the MINUSTAH peacekeeping soldiers who sexually abuse children and teenagers in

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132. *Id.* (emphasis added).

133. Agreement, *supra* note 6.

134. See generally *Keeping Children Safe: Standards for child protection*, KEEPING CHILDREN SAFE COALITION (SEPT. 2007) available at [http://www.un.org/en/pseataforce/docs/keeping\\_children\\_safe\\_standards\\_for\\_child\\_protection\\_tool.pdf](http://www.un.org/en/pseataforce/docs/keeping_children_safe_standards_for_child_protection_tool.pdf).

135. Agreement, *supra* note 6, at ¶ 50.

136. Szasz & Ingadottir, *supra* note 129, at 880.

137. Agreement, *supra* note 6, at art. 51(b).

138. See *supra* part II(B).

139. Compare Penal Code (Sri Lanka) *supra* notes 82-85, with Cód. Pen. (Uru.) *supra* notes 78-81.

140. Haiti’s Renewal of MINUSTAH’S mandate in violation of the Human Rights of the Haitian People (Oct. 3-13, 2011) ¶¶ 7, 8 pg. 2, [http://ijdh.org/wordpress/wp-content/uploads/2011/03/Final\\_MINUSTAH\\_English.pdf](http://ijdh.org/wordpress/wp-content/uploads/2011/03/Final_MINUSTAH_English.pdf) [hereinafter Haiti’s Renewal].

Haiti.<sup>141</sup> Senator Latortue believes that this resolution is needed because “the UN peacekeepers involved in twelve cases of sexual assault of children in Haiti have gone unpunished because of the immunity” and he also wishes to bring justice to the victims and their families.<sup>142</sup> The Haitian government has requested to investigate human rights abuses by peacekeepers, such as the sexual assault and rape of children, under the “principles of equality before the law and the universal nature of human rights.”<sup>143</sup> This request by the Haitian government and Senator Latortue demonstrates that the SOFA and the immunity provisions do not provide an adequate legal remedy or justice for the egregious crimes committed by the peacekeepers, because the accused are not prosecuted by their respective countries.<sup>144</sup>

### C. Justice for the Children

The SOFAs provide that if a UN peacekeeper commits a crime in the host country, the CPIUN applies and the offender is subject to the jurisdiction of their home country.<sup>145</sup> However, if the crime violates international human rights and UN Conventions, such as the CRC and the UNCHR, it is arguable that the offender should be subject to the same tribunals and punishment as other violators of human rights, and thus subject to the jurisdiction of the International Criminal Court.<sup>146</sup>

In past cases where UN peacekeepers have been accused of sexual violence, very few cases have been resolved and only two peacekeepers have been imprisoned.<sup>147</sup> If the sexual violence against children is to be deterred and prevented, then the UN and the international community must show that such acts are not tolerated and ensure that justice prevails for the victim.

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141. Jean Michel Cadet Jeanmich & Youri Latortue, *Pour la levée d'immunité des soldats Pakistanais*, CANADA HAITI ACTION NETWORK (Feb. 7, 2012), <http://canadahaitiaction.ca/content/youri-latortue-pour-la-levée-d'immunité-des-soldats-pakistanais> (original article in French).

142. *Id.*

143. Haiti's Renewal, *supra* note 140, at ¶¶ 7, 8.

144. *See supra* part II(B); Csáky, *supra* note 38.

145. G.A. Res. 45/76, U.N. Doc. A/45/594 (Oct. 9, 1990).

146. *See infra* part III(C)(1).

147. Csáky, *supra* note 38, at 15 (out of 856 allegation of sexual abuse from 2004-2006, only 324 have been resolved, citing U.N. Secretary-General, *supra* note 53).

The UN has attempted to implement procedures and to ensure that proper measures are taken against child sex abusers, including developing investigative procedures and protocols.<sup>148</sup> Alas, the Intern-Agency Standing Committee (IASC) has stated that “it has been impossible to determine if the incidence of sexual exploitation and abuse has increased or decreased” despite the efforts of the United Nations and other international Non-Governmental Organizations.<sup>149</sup> The UN, in response to sexual exploitations by peacekeepers, passed Resolution 1325, which holds participating States responsible for failures in international human rights law.<sup>150</sup> Importantly, Resolution 1325 calls for States to end impunity and prosecute those who are involved in crimes against humanity, such as sexual violence against children.<sup>151</sup> Amnesty International has reported that Resolution 1325 has not been implemented effectively by member States.<sup>152</sup>

In 2008, the UN renewed commitment to preventing sexual violence in conflict settings by passing Resolution 1820.<sup>153</sup> The resolution implements a ‘zero-tolerance’ policy concerning sexual abuse in peacekeeping operations, calling for Member States to immediately comply with their obligations by prosecuting persons responsible for such acts, removing armed forces personnel, and holding commanders responsible.”<sup>154</sup> Most importantly, Resolution 1820 grants jurisdiction to the ICC by categorizing sexual violence as a war crime.<sup>155</sup> However, unless jurisdiction is granted to the ICC the investigation and prosecution of sexual crimes committed by peacekeepers remain with the member States, which unfortunately leads to many peacekeepers being unpunished.<sup>156</sup>

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148. IASC Task Force, *supra* note 5.

149. *Id.*

150. S.C. Res. 1325, ¶ 11, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

151. *Id.*

152. *Women, Peace and Security: Fourth Anniversary of Security Council Resolution 1325*, AMNESTY INTERNATIONAL 3 (Oct. 11, 2004), <http://www.amnesty.org/en/library/info/IOR52/004/2004/en>.

153. S.C. Res. 1820, ¶ 1, U.N. Doc. S/RES/1820 (June 19, 2008); Reyes, *supra* 85, at 227 (2009).

154. S.C. Res. 1820, *supra* note 153.

155. *Id.*

156. Reyes, *supra* note 91, at 228.

1. *Jurisdiction of The International Criminal Court*

The International Criminal Court has jurisdiction to hear crimes that are “the most serious crimes of concern to the international community as a whole False with respect to crimes against humanity.”<sup>157</sup> The rape of women has been determined to be a crime against humanity by the ICC;<sup>158</sup> furthermore sexual violence has been qualified as a war crime.<sup>159</sup> The UN has also stated that the rape of children is a war crime, and therefore is under the jurisdiction of the ICC.<sup>160</sup> If it were found the national court could not or will not investigate or prosecute the accused offenders, the ICC would have jurisdiction to hear and adjudicate the case.<sup>161</sup> The ICC can also exercise jurisdiction if a State Party refers the committed crimes to the Court. Additionally, the Security Council, acting under Chapter VII of the UN Charter, can refer a case to the Prosecutor.<sup>162</sup> The Security Council can refer the crimes committed by peacekeepers to the Prosecutor<sup>163</sup> because Haiti has not ratified the Rome Statute.<sup>164</sup>

There are other possible procedural hurdles that may need to be met prior to the ICC obtaining jurisdiction to hear cases regarding the rape of children by peacekeepers in Haiti. For example, prior to the International Criminal Tribunal in the former Yugoslavia, the court first established jurisdiction over the participants of the Balkan conflict by determining that the offenses were committed during an armed conflict.<sup>165</sup> The *Prosecutor v. Tadic* decision defined armed conflict as an occurrence “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups

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157. Rome Statute, *supra* note 66, at art. 5(1)(b).

158. *See supra* part III(A).

159. Katy Glassborow, *ICC Investigative Strategy on Sexual Violence Crimes Under Fire*, HUMAN RIGHTS TRIBUNE (Oct. 20, 2008), [http://www.humanrights-geneva.info/ICC-investigative-strategy-on](http://www.humanrights-geneva.info/ICC-investigative-strategy-on;); S.C. Res. 1820, *supra* note 153.

160. *UN confirms sex charges*, *supra* note 46.

161. Rome Statute, *supra* note 66, at art. 12.

162. *Id.* at arts. 13 & 14.

163. *Id.* at art. 13.

164. *See* Participant Table of Rome Statute of the International Criminal Court, *supra* note 66, available at [http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&abid=1&mtdsg\\_no=XVIII-10&chapter=18&lang=en#Participants](http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&abid=1&mtdsg_no=XVIII-10&chapter=18&lang=en#Participants) (last visited Mar. 31, 2012) (Haiti was a signatory Feb. 26, 1999, but the space provided for approval, acceptance, accession, succession, and ratification is blank).

165. McHenry, *supra* 95, at 1286 (citing Kunarac, Judgment, No. IT-96-23, at § IV, para. 413).

within a state.”<sup>166</sup> Under this requirement the ICC or an International Criminal Tribunal could not impose jurisdiction on crimes committed by UN peacekeepers, namely acts of sexual violence against Haitian children. In the alternative, jurisdiction exercised by either the ICC or an International Criminal Tribunal could be proper by a determination that there was attack directed against any civilian populations; proof of which would contain five elements:

- 1) There must be an attack.
- 2) The acts of the perpetrator must be part of the attack.
- 3) The attack must be “directed against any civilian population.”
- 4) The attack must be “widespread or systematic.”
- 5) The perpetrator must know of the wider context in which his acts occur and know that his acts are a part of the attack.<sup>167</sup>

In Haiti, the sexual violent acts committed by the UN peacekeepers towards children can easily be deemed an attack against the civilian population. Although the Rome Statute is primarily concerned with war crimes, the situation in Haiti would be considered as crimes against humanity, where conflict and war need not exist for the jurisdiction of the ICC.<sup>168</sup> The UN peacekeepers are troops,<sup>169</sup> the publicized acts of the troops from Sri Lanka demonstrate that the rape and sexual assault of Haitian children was a systematic attack upon the children, the UN peacekeeping troops involved were a part of the attack because (i) they either committed the sexual assault themselves, or assisted in the act;<sup>170</sup> (ii) Haitian children are civilians;<sup>171</sup> and (iii) the recording of the assault troops against the Haitian teen, demonstrates knowledge of the act being apart of the attack.<sup>172</sup> Jurisdiction of the ICC under an armed attack against a

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166. Prosecutor v. Tadic, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, No. IT-94-1-A, ¶ 70 (ICTY, Oct. 2, 1995), available at <http://www.un.org/icty/ind-e.htm>.

167. See McHenry, *supra* note 95, at 1287 (citing *Kunara*, Judgment, No. IT-96-23, § IV, para. 410).

168. Rome Statute, *supra* note 66, at art. 5(1)(c).

169. *E.g. Troop and police contributors*, *supra* note 122 (“our military and police personnel”).

170. See *supra* part II(A).

171. *E.g. Patterns in conflict: Civilians are now the target*, UNICEF—INFORMATION: IMPACT OF ARMED CONFLICT ON CHILDREN, <http://www.unicef.org/graca/patterns.htm> (children are included in the discussion of civilian fatalities).

172. See *supra* part II (A) and (B).

civilian population can be exercised because the peacekeepers are armed in accordance with their duties as troops and police forces.<sup>173</sup>

Whether or not the ICC can exercise jurisdiction over UN peacekeepers will also depend on the SOFA agreements and immunity provisions contained therein.<sup>174</sup> However, the SOFA immunities provisions<sup>175</sup> would not be applicable because sexual violent acts by UN peacekeepers are outside the scope of the immunity clause.<sup>176</sup> Article 27 of the Rome Statute provides that official capacity will not bar jurisdiction of the ICC or exempt a person from criminal responsibility.<sup>177</sup> However, if the Government of Haiti is successful in lifting the immunity clause of MINUSTAH's SOFA, then the issue is moot.<sup>178</sup>

It is recognized that international humanitarian law and international human rights law is applicable to individuals.<sup>179</sup> The Rome Statute explicitly authorizes the ICC's jurisdiction over individuals who commit crimes that are under the jurisdiction of the Court.<sup>180</sup> The ICC is favorable because it would be a fair and impartial trial.<sup>181</sup> Furthermore, the ICC's ruling will be absolute and equitable.

States vary within their penal code and punishment,<sup>182</sup> which creates inequitable results, for example if a peacekeeper rapes a child, how the peacekeeper will be punished will depend on what State he originates from.<sup>183</sup> Therefore, a tribunal created by the ICC would ensure that those who sexually abuse children would be subject to the same consequences and penalties. There are barriers to an ICC trial, they can be costly and time consuming. In the alternative, a special tribunal of the ICC can accomplish the same goals of an ICC trial without the extensive cost and time. Tribunals have been created

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173. *E.g. Military, UNITED NATIONS PEACEKEEPING*, <http://www.un.org/en/peacekeeping/issues/military.shtml> ("blue helmets," or peacekeepers, are UN military personnel).

174. *See generally*, Szasz & Ingadottir, *supra* note 129, at 872 (citing CPIUN, Sec. 22(b)).

175. *See supra* part II(B)(1).

176. Szasz & Ingadottir, *supra* note 129, at 880.

177. Rome Statute, *supra* note 66, at art. 27.

178. Jeanmich, *supra* note 141.

179. Reyes, *supra* note 91, at 222.

180. Rome Statute, *supra* note 66, at art. 25.

181. *See generally id.*, at preamble and § 6.

182. *See supra* part II(B).

183. *See supra* part II(B) (part II examined the different penal codes between two States, Uruguay and Sri Lanka, and how the States defined rape and punishment for individuals who commit such crimes).

before, in the former Yugoslavia and Rwanda, which have both prosecuted individuals for crimes against humanity, including rape and sexual violence.<sup>184</sup> Unlike the tribunals of Yugoslavia, a tribunal under the ICC would not be *ad hoc* or embedded with the UN Security Council.<sup>185</sup> A tribunal in Haiti can be limited in time and scope, similar to former tribunals. Furthermore, since the ICC is a permanent court the residual issues that resulted from former tribunals or “selective justice” is irrelevant.<sup>186</sup> The ICC has also explicitly codified sexual violent crimes that are comparable to grave crimes against humanity, including: rape, sexual slavery, and forced prostitution.<sup>187</sup>

If an ICC tribunal were located in Haiti, it would ensure that victim testimony and evidence would not be tampered with. It would also decrease the costs of the tribunal because the ICC would not have to transport the victims and witnesses to several countries. By having the tribunal in Haiti, the victim will have the opportunity to be heard, which would satisfy the CRC’s mandate, that children should be provided the opportunity to be heard in any judicial proceeding that affects the child.<sup>188</sup> The recent events involving the peacekeepers from Uruguay has demonstrated the injustice that can result from having judicial proceedings against those who sexually assault children; because of the prosecutor’s inability to obtain victim testimony it resulted in the men being released from prison.<sup>189</sup>

#### IV. THE HOLY SEE AND THE UN PROTECTING THE DIGNITY AND

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184. Prosecutor v. Delalic, Case No. IT-96-21-A, Judgment (Feb. 20, 2001); Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998); Louise Arbour, *Sex Crimes Against Women in Conflict Seldom Punished*, ALLAFRICA (Mar. 8, 2007).

185. International Criminal Court, PROJECT ON INTERNATIONAL COURTS AND TRIBUNALS, <http://www.pict-pcti.org/courts/ICC.html>.

186. *Rome Statute of the International Criminal Court: Overview*, <http://untreaty.un.org/cod/icc/general/overview.htm> (residual issues of tribunals discussed in Valerie Oosterveld, *The International Criminal Court and the Closure of the Time-Limited International and Hybrid Criminal Tribunals*, 8 LOY. U. CHI. INT’L L. REV. 13, 22-28 (2010)).

187. Rome Statute, *supra* note 66, at art. 7(1)(g).

188. CRC, *supra* note 118, at art. 12; see PROJECT ON INTERNATIONAL COURTS, *supra* note 179 (provisions within the Rome Statute require victims and their families be involved in the process and express their views).

189. Sanon, *supra* note 72.

RIGHTS OF THE CHILD<sup>190</sup>

Children are a “precious treasure given to each generation as a challenge to its wisdom and humanity” and are persons and members of the human family and have an *innate dignity* that must be recognized and respected.<sup>191</sup> Protecting children from violence, including sexual violence, is one of the many the challenges presented to the international community.<sup>192</sup> The UNDHR recognizes “the value of the human person” and “the inherent dignity and equal and inalienable rights of all members of the human family.”<sup>193</sup> Thus, both the secular United Nations and the Holy See recognize that all members of the human race, including children, have an inherent dignity and value, which should be protected from the acts, sexual abuse, that violate their dignity.<sup>194</sup>

In furtherance of the UNDHR, the UN implemented an internationally legally binding instrument to protect children’s rights, the CRC, which demonstrates an international effort to eliminate violence against children.<sup>195</sup> The Holy See teaches that eliminating violence against children will help to eliminate violence in the world.<sup>196</sup> Sexual violence against children, whether it is rape, abuse, exploitation, or harassment, is “a gross violation of children’s rights.”<sup>197</sup>

Although the Holy See had reservations to CRC, it is a signatory to the CRC because ultimately the Church determined that the CRC is “a proper and laudable instrument aimed at protecting the rights and

190. THE PERMANENT OBSERVER MISSION OF THE HOLY SEE TO THE UNITED NATIONS, <http://www.holyseemission.org/> (last visited Mar. 31, 2012) (the Holy See enjoys a permanent observer status at the U.N.).

191. Pontifical Council for the Family, *The Family and Human Rights* ¶13 (1984).

192. H.E. MSGR. Silvano M. Tomasi, Address at the Ordinary Session of the United Nations Convention of the Rights of a Child (Mar. 23, 2007) (transcript *available at* [http://www.vatican.va/roman\\_curia/secretariat\\_state/2007/documents/rc\\_seg-st\\_20070323\\_children\\_en.html](http://www.vatican.va/roman_curia/secretariat_state/2007/documents/rc_seg-st_20070323_children_en.html)).

193. *Universal Declaration of Human Rights* Preamble, Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 [hereinafter UNDHR]; *cf.* U.N. Charter Introduction; *see also* *The Family and Human Rights*, *supra* note 191, at ¶13.

194. *Id.* (the *Declaration of Human Rights* and the Holy See (*Pacem in Terris*) both express the view point that the dignity is not abstract but is present in every person/human being, including the “child.”)

195. CRC, *supra* note 118, at art. 19.

196. Tomasi, *supra* note 192.

197. UNICEF, *Child protection from violence, exploitation and abuse*, [http://www.unicef.org/protection/57929\\_58006.html](http://www.unicef.org/protection/57929_58006.html).

interests of children.”<sup>198</sup> Enumerated within the articles of the CRC and the two optional protocols are the very basic and fundamental right that children have everywhere: protection from abuse and exploitation.<sup>199</sup> Furthermore, the CRC was welcomed by the Holy See as recognizing the particular vulnerability of children, that a child has the same equality and dignity as an adult, and is entitled to fundamental rights.<sup>200</sup> Importantly, the Holy See emphasized the CRC’s affirmation to a child’s “*special safeguards and care, including appropriate legal protection.*”<sup>201</sup> Consequently, not only is the CRC a legal obligation imposed on its signatories to protect children from abuse, including sexual violence, but also a moral obligation.

When UN peacekeepers sexually abuse, assault, and exploit children where they have a duty protect, they are effectively violating international and moral obligations. Furthermore, when the peacekeepers who have abused children leave Haiti, the effects of their abuse will remain with the children and their families and communities.<sup>202</sup> The UN and the international community have a moral and legal obligation to ensure the punishment, through an ICC limited tribunal, of those who commit sexual violence against children because, after all, “Respect for children is respect of humanity.”<sup>203</sup>

## CONCLUSION AND RECOMMENDATIONS

Children require special protection and respect.<sup>204</sup> When children are sexually assaulted, raped, or are victims of other acts of sexual violence their basic human dignity is damaged. What adds insult to injury, is that these atrocities were performed by those whose duty and obligation was to protect these vulnerable children from such atrocities.<sup>205</sup> The acts of the UN peacekeepers in Haiti have shocked

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198. CRC, *supra* note 118, at art. 11 (Holy See signed and ratified the convention on Apr. 20, 1990. The Holy See’s three reservations are: interpreting family planning as only morally acceptable methods of family planning; articles as safeguarding the rights of parents; and compatible with laws of Vatican City).

199. CRC, *supra* note 118, at arts.19 & 34.

200. Tomasi, *supra* note 192.

201. *Id.* (emphasis added).

202. *Child protection from violence, supra* note 197 (evidence shows that sexual abuse of children can have short- and long- term physical, psychological and social consequences).

203. Tomasi, *supra* note 192.

204. See Tomasi, *supra* note 192 and CRC, *supra* note 118, Preamble.

205. Peacekeeping Principles, *supra* note 10.

the global conscious, and what is more horrific is that the accused offenders often go unpunished by their respective States.<sup>206</sup> The UN has been given the responsibility to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person [including children].”<sup>207</sup> Rape, or sexual violence against children, is a human rights violation,<sup>208</sup> and the UN is charged in protecting and eliminating human rights violations and has an affirmative duty to protect from and prevent sexual violence by peacekeepers.<sup>209</sup> The Security Council can, and should, refer peacekeepers to the ICC for prosecution for these crimes because they are crimes against humanity and the SOFAs and MODs are voidable upon a *jus cogen* or *erga omnes* obligation.<sup>210</sup>

Consequently, if the international community and the UN are committed to establishing human rights worldwide, including the rights of the child, the peacekeepers accused for sexually assaulting or raping children in Haiti must be submitted to the ICC to be held criminally responsible for their acts. It is our moral duty to ensure that justice is served and that these children are protected from such evils.

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206. *See supra* part II.

207. U.N. Charter Preamble.

208. Rome Statute, *supra* note 66, at art. 7(1)(g).

209. Peacekeeping Principles, *supra* note 10.

210. *See supra* part III.