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# THE UNITED NATIONS AND WOMEN—A CRITIQUE

ELIZABETH F. DEFEIS\*

## INTRODUCTION

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## INTRODUCTION

Since the United Nations (U.N.) was founded in 1945, the organization has pledged to promote equality and non-discrimination throughout the world.<sup>1</sup> The United Nations Charter is the most significant and widely ratified international agreement making reference to the rights of women. The Preamble reaffirms the faith of the members of the United Nations in “fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . . .”<sup>2</sup> Article 1 sets forth the purposes of the United Nations, and states that in addition to maintaining peace and security, one of the purposes is to “promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to . . . sex . . . .”<sup>3</sup>

Gender equality was indeed a revolutionary idea when the United Nations was established. In 1945, less than one half of all nations allowed women to vote. Specifically, discrimination against women was permitted in the United States in virtually all aspects of life including employment, jury service, access to credit and even within the criminal justice system itself.<sup>4</sup>

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1. U.N. Charter art. 1, para. 3.

2. *Id.* pmbl.

3. *Id.* art. 1, paras. 1, 3.

4. Barbara A. Brown et al., *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871, 882 & n.30 (1971); John D. Johnston, Jr. &

From its inception, the United Nations has been in the forefront of advancing women's legal rights through the development of norms relating to gender equality,<sup>5</sup> General Assembly declarations, the formulation of treaties, and its emphasis on the development of international criminal jurisprudence and prosecution of gender based crimes.<sup>6</sup> It has also focused attention and resources on addressing the pervasive problem of violence against women as a violation of human rights and has now created a so-called super-agency headed by an under-secretary general to address and advance issues concerning women.<sup>7</sup>

However, it is indeed ironic that the United Nations, which has been instrumental in setting norms in the area of gender equality, now stands accused of egregious acts of sexual abuse and exploitation committed by United Nations Peacekeepers.<sup>8</sup> In addition, the U.N. has been criticized for personnel policies within the organization itself that negatively impact women and for its mishandling of allegations of sexual harassment within the organization.<sup>9</sup> Despite urging by various bodies within the U.N. and Non-Governmental Organizations (NGOs) to increase the number of women in decision making positions within the U.N., women continue to be underrepresented.<sup>10</sup>

This article will assess the effectiveness of efforts undertaken by the U.N. to address the inequalities that continue to exist between men and women in three key areas:

1. Development of norms and treaties relating to women;
2. Advancements in international criminal law and the establishment of international criminal tribunals that address gender based crimes; and
3. Initiatives to end worldwide violence against women.

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Charles L. Knapp, *Sex Discrimination by Law: A Study in Judicial Perspective*, 46 N.Y.U. L. REV. 675, 678 nn.4, 14 & 15, 708, 739 (1971).

5. *Global Issues: Women*, UNITED NATIONS, [www.un.org/en/globalissues/women/](http://www.un.org/en/globalissues/women/) (last visited Jan. 31, 2011).

6. *Id.*

7. *Id.* (discussing the creation of "UN Women" on July 2, 2010).

8. Owen Bowcott, *Report Reveals Shame of UN Peacekeepers*, GUARDIAN, Mar. 25, 2005, <http://www.guardian.co.uk/world/2005/mar/25/unitednations/print>; see also Colum Lynch, *U.N. Faces More Accusations of Sexual Misconduct*, WASH. POST, Mar. 13, 2005, <http://washingtonpost.com/ac2/wp-dyn/A30286-2005Mar12?language=printer> (noting that the U.N. is facing sexual misconduct allegations in Burundi, Haiti, Liberia, and Congo).

9. Steve Stecklow, *Sexual-Harassment Cases Plague U.N.*, WALL ST. J., May 21, 2009, <http://online.wsj.com/article/SB124233350385520879.html>.

10. CAMILLE PAMPELL CONAWAY & JOLYNN SHOEMAKER, WOMEN IN INT'L SEC., WOMEN IN UNITED NATIONS PEACE OPERATIONS: INCREASING THE LEADERSHIP OPPORTUNITIES 5 (2008).

Several areas in which U.N. policies or practices have not been positive will also be addressed. They include:

1. Sexual abuse by U.N. Peacekeepers;
2. Personnel practices at the U.N.; and
3. Sexual harassment allegations within the U.N. system.

## I. BUILDING BLOCKS AND EARLY ACHIEVEMENTS

### A. *Development of Norms and Treaties*

At the time that the United Nations was founded, Eleanor Roosevelt chaired the Commission on Human Rights.<sup>11</sup> Under her leadership, the Universal Declaration of Human Rights (UDHR) was drafted and adopted by the General Assembly without dissent.<sup>12</sup> The UDHR was the first human rights document that was open to all states to adhere to. Although both the U.N. Charter and the UDHR speak in terms of equal rights for men and women, a special commission was proposed to implement this guarantee.<sup>13</sup> Roosevelt opposed the creation of the Commission because, in her view, if rights were equally protected for men and women, a special body to monitor rights for women was unnecessary.<sup>14</sup> Despite her objections, the Commission on the Status of Women (CSW) was established by the U.N. and continues to be the principle global policy body dedicated exclusively to gender equality and the advancement of women.<sup>15</sup>

The CSW has been instrumental in developing norms in areas of concern to women and has focused world attention on issues that particularly impact women. This has been accomplished in several ways, including the sponsorship of conferences and programs that have resulted in treaties, declarations, and programs of action.<sup>16</sup>

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11. *60th Anniversary of the Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/events/humanrights/udhr60.photos.shtml> (last visited Jan. 31, 2011).

12. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

13. Mary Ann Glendon, *The Rule of Law in the Universal Declaration of Human Rights*, 2 N.W. U. J. INT'L HUM. RTS. 5, ¶ 3 (2004), <http://www.law.northwestern.edu/journals/jihr/v2/5>.

14. See, e.g., Paula F. Pfeffer, *Eleanor Roosevelt and the National and World Woman's Parties*, 59 HISTORIAN 39, 53 (1996) (claiming that treating women as a group distinct from men "impl[ies] 'a silent recognition of the idea that women are to be regarded on a different level and rights are to be given to them out of charity'" (citation omitted)).

15. See *Commission on the Status of Women: Overview*, UNITED NATIONS, <http://www.un.org/womenwatch/daw/csw/> (last visited Jan. 31, 2011) (noting that the CSW is "dedicated exclusively to gender equality and advancement of women").

16. *Id.*

The U.N. has sponsored periodic world conferences that identify issues and develop strategies to improve the status of women on a world-wide basis. The decade 1976-1985 was designated as the United Nations Decade for Women, and sex-disaggregated data was generated and analyzed.<sup>17</sup> The General Assembly declared 1975 as International Women's Year and organized the first World Conference on Women, held in Mexico City.<sup>18</sup> The conference defined a World Plan of Action for the Implementation of the Objectives of the International Women's Year, which offered a comprehensive set of guidelines for the advancement of women.<sup>19</sup> Subsequent conferences were convened in Copenhagen in 1980, which urged governments to implement the Programme of Action;<sup>20</sup> and Nairobi in 1985, which was called the World Conference to Review and Appraise the Achievements of the U.N. Decade for Women: Equality, Development and Peace, and included a mandate to member states to establish concrete measures to overcome the obstacles to achieving the Decade's goals.<sup>21</sup>

The final conference dedicated to women was the 1995 Beijing Conference. It was attended by almost 50,000 people from more than 180 countries and was the largest U.N. gathering ever held at that time.<sup>22</sup> The Beijing Declaration and Platform for Action, adopted unanimously by 189 countries, built on political agreements reached at the three previous global conferences on women and consolidated five decades of legal advances aimed at securing the equality of women with men in law and in practice.<sup>23</sup> It addressed key areas of concern

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17. See HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 4 (2000) (analyzing the distinct forms of oppression faced by women).

18. *Milestones in United Nations History: A Selective Chronology*, UNITED NATIONS, <http://www.un.org/aboutun/milestones.htm> (last visited Jan. 31, 2011).

19. World Conference of the International Women's Year, Mex. City, Mex., June 19-July 2, 1975, *Declaration of Mexico on the Equality of Women and their Contributions to Development and Peace, 1975*, U.N. Doc. E/CONF.66/34 (1976).

20. G.A. Res. 35/136, ¶ 6, U.N. Doc. A/RES/40/108 (Dec. 11, 1980).

21. G.A. Res. 40/108, ¶ 5, U.N. Doc. A/RES/40/108 (Dec. 13, 1985); Pamela Goldberg & Nancy Kelly, *Recent Developments: International Human Rights and Violence Against Women*, 6 HARV. HUM. RTS. J. 195, 198-99 (1993) (citations omitted); Geraldine A. del Prado, *The United Nations and the Promotion and Protection of the Rights Of Women: How Well Has the Organization Fulfilled Its Responsibility?*, 2 WM. & MARY J. WOMEN & L. 51, 57 (1995).

22. *15 Years After Landmark Gathering, Women Still Lack Equal Rights*, U.N. DEV. PROGRAMME (Mar. 1, 2010), <http://content.undp.org/go/newsroom/2010/march/15-years-after-landmark-gathering-women-still-lack-equal-rights-and-opportunities.en>.

23. Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, ¶¶ 8-10, U.N. Doc. A/CONF.177/20/Rev.1 (1996) [hereinafter *Beijing Declaration*]; Charlotte Bunch, *Women and Gender*, in *THE OXFORD HANDBOOK ON THE UNITED NATIONS* 496, 499 (Thomas G. Weiss & Sam Daws, eds., 2007); see also Benjamin D. Knaupp, Comment, *Classifying International Agreements Under U.S. Law: The Beijing Platform as a Case Study*, 1998 BYU L. REV. 239, 240 (1998) (measur-

for women including: human rights, violence against women, health, economic empowerment and special concerns of the girl child.<sup>24</sup> Forced abortions, forced sterilizations, female genital mutilation, dowry burning, and sexual harassment were condemned.<sup>25</sup> Domestic violence was identified as a worldwide problem.<sup>26</sup>

However, declarations, such as the Beijing Declaration, even if followed by Resolutions of the General Assembly, are not binding,<sup>27</sup> although they often contribute to the development of treaties that translate such promises into binding legal obligations among states. The Universal Declaration of Human Rights [UDHR], adopted at the first session of the General Assembly, provides: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>28</sup> The UDHR further stipulates: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”<sup>29</sup>

Equality and non-discrimination are the overarching themes of the international human rights system. As such, equal treatment and non-discrimination on the basis of sex are accepted principles of human rights law.<sup>30</sup> General human rights treaties at both the universal and regional levels contain rights of non-discrimination on a number of bases that include sex, and prohibit distinctions based on sex with respect to the enjoyment of rights. For example, Article 3 of the International Covenant on Civil and Political Rights (ICCPR) states that “[t]he States Parties . . . undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”<sup>31</sup> Article 26 provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this re-

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ing the Beijing Platform against the five classifications of international agreements).

24. *Beijing Declaration*, *supra* note 23, ¶¶ 23-34.

25. *Id.* ¶ 113.

26. *Id.* ¶ 112.

27. MINN. ADVOCATES FOR HUMAN RIGHTS., SUMMARY OF THE BEIJING DECLARATION AND PLATFORM FOR ACTION 2 (1996).

28. UDHR, *supra* note 12, art. 2.

29. *Id.* art. 7.

30. Office of the High Commissioner for Human Rights, *General Comment 18: Non-discrimination*, ¶¶ 1-2, U.N. Doc. A/45/40 (Vol. I) Supp. (Oct. 11, 1989).

31. International Covenant on Civil and Political Rights art. 3, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

spect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>32</sup>

Despite progress in the general human rights arena, it soon became apparent that there was a need to supplement the general human rights treaties with a treaty specifically applicable to women.<sup>33</sup> One of the major accomplishments of the Commission on the Status of Women was the development of treaties on matters such as the minimum age to marry, the nationality of married women, and the enfranchisement of women.<sup>34</sup> In 1979, the General Assembly adopted the comprehensive Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),<sup>35</sup> often called the International Bill of Rights for Women.<sup>36</sup> The Convention defines gender discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>37</sup> It requires states to embody the principle of equality of men and women in their constitutions or appropriate legislation, to modify or abolish existing laws, regulations, customs and practices that discriminate against women, and to take all appropriate measures to eliminate discrimination against women.<sup>38</sup> To date, more than 185 nations, or more than 90% of the world’s countries, have ratified this Convention, though the United States has not.<sup>39</sup>

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32. *Id.* art. 26

33. See Elizabeth F. Defeis, *Equity and Equality for Women—Ratification of International Covenants as a First Step*, 3 SETON HALL CONST. L.J. 363, 399 (1993) (noting the pervasive nature of gender discrimination required a treaty targeting the protection of women’s human rights).

34. Draft Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 1763 (XVII), U.N. GAOR, 17th Sess., 1167th plen. mtg. at 28, U.N. Doc. A/RES/1763 (XVII) (Nov. 7, 1962); Convention on the Nationality of Married Women, G.A. Res. 1040 (XI), U.N. GAOR, 11th Sess., 647th plen. mtg. at 18, U.N. Doc. A/RES/1040 (XI) (Jan. 29, 1957); Convention on the Political Rights of Women, G.A. Res. 640 (VII), U.N. GAOR, 7th Sess., 409th plen. mtg. at 28, U.N. Doc. A/RES/640 (VII) (Dec. 20, 1952).

35. Convention on the Elimination of all Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

36. *Overview of the Convention*, UNITED NATIONS, (2009), <http://www.un.org/womenwatch/daw/cedaw/> (last visited Jan. 31, 2011).

37. CEDAW, *supra* note 35, art. 1.

38. *Id.* art. 2.

39. U.N. Treaty Collection, Status of the Convention on the Elimination of all Dis-

Unfortunately, reservations to human rights treaties and to CEDAW in particular are an obstacle to their effectiveness. There have been more than 100 reservations submitted by over 40 states to CEDAW,<sup>40</sup> more than to any other human rights treaty.<sup>41</sup> “Reserving states justify their reservations on grounds of religion, culture, tradition, and economics.”<sup>42</sup> For example, some reservations provide that in a conflict between the terms of the Convention and Shari’a law, Shari’a law shall prevail.<sup>43</sup> Other states, including Turkey, Thailand, New Zealand, Brazil, and Tunisia, have entered reservations regarding the equality between men and women in matrimonial property and family law.<sup>44</sup> Malawi entered a reservation stating that it did not consider itself bound by provisions that require immediate eradication of discriminatory practices due to the “‘deep-rooted nature of some traditional customs and practices.’”<sup>45</sup>

Despite the requirement that reservations are impermissible if they are incompatible with the object and purpose of the treaty, the reservations to CEDAW have been tolerated in order to gain maximum adherence to the Convention.<sup>46</sup> The Committee charged with

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crimination against Women, [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&&chapter=4&lang=en) (last visited Jan. 31, 2011) [hereinafter Status of CEDAW].

40. *Id.*

41. See *Declarations, Reservations, and Objections to CEDAW*, UNITED NATIONS, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (listing reservations by country) (last visited Jan. 31, 2011).

42. Elizabeth F. Defeis, *Women’s Human Rights: The Twenty-First Century*, 18 *FORDHAM INT’L L.J.* 1748, 1751 (1995).

43. See Jennifer Riddle, Note, *Making CEDAW Universal: A Critique of CEDAW’s Reservation Regime Under Article 28 and the Effectiveness of the Reporting Process*, 34 *GEO. WASH. INT’L L. REV.* 605, 627 (2002).

Libya made a general reservation citing that CEDAW cannot conflict with Islamic laws having to do with “personal status derived from the Islamic Shari’a.” Bangladesh reserved on Articles 2, 13(a), and 16(1)(c) and (f) because “they conflict with Shari’a law.” Egypt also reserved on Articles 2 and 16 in regard to marriage and family relations, though it stated that Shari’a “restricts the wife’s rights to divorce by making it contingent on a judge’s ruling, whereas no such restriction is laid down in the case of the husband.” India reserved on Articles 5(a) and 16, citing a policy of “noninterference in the personal affairs of any Community” and “[the country’s] variety of customs [and] religions,” while Iraq reserved on Article 2 without offering any explanation at all.

*Id.* (alteration in original) (citations omitted); Bharathi Anandhi Venkatraman, Note, *Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination against Women: Are the Shari’a and the Convention Compatible?*, 44 *AM. U. L. REV.* 1949, 1951-52 (1995).

44. Status of CEDAW, *supra* note 39.

45. *Id.*

46. See Vienna Convention on the Law of Treaties art. 19, May 23, 1969, 1155 U.N.T.S. 311 (listing instances in which a State cannot formulate a reservation).

oversight of CEDAW has taken the position that elimination of such reservations would greatly strengthen the effective reach of the Convention.<sup>47</sup> Although this deficiency has long been recognized these reservations continue and greatly weaken the effectiveness of the treaty.

On December 22, 2000, the Optional Protocol to CEDAW entered into force.<sup>48</sup> The Protocol contains two procedures: (1) a communications procedure allowing individuals to submit claims of violations of protected rights,<sup>49</sup> and (2) an inquiry procedure enables the Committee to initiate inquiries into situations of “grave or systematic violations” of women’s rights.<sup>50</sup>

The Convention has been criticized for its ineffective implementation, its weak language, its plethora of reservations, and the very inefficient reporting system.<sup>51</sup> Moreover, the resources allocated to the Committee are insufficient, and indeed, until recently, the Committee met for only two weeks of each year.<sup>52</sup>

The overall rationale of the Convention is equality and nondiscrimination, and it aims to achieve equality of treatment between men and women in the public sphere. Some have challenged this approach because it requires women to conform to a male-defined world and ignores the underlying reason for the inequality.<sup>53</sup>

More recently, it has been suggested that the standard to be applied should be gender equity rather than equality.<sup>54</sup> This approach

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47. During the CEDAW Committee’s sixth meeting, it expressed concern about “the significant number of reservations that appeared to be incompatible with the object and purpose of the Convention.” Chairperson of the Comm. on the Elimination of Discrimination against Women, *Rep. of the Comm. on the Elimination of Discrimination Against Women*, ¶ 579, U.N. Doc. A/42/38 (Apr. 10, 1987). It suggested that parties reconsider these reservations, with a view to withdrawing them. The Committee also asked the United Nations “to promote or undertake studies on the status of women under Islamic laws and customs and in particular on the status and equality of women in the family . . . taking into consideration the principle of *El Ijtihad* in Islam.” *Id.* ¶ 580. In 1993, the Vienna Conference on Human Rights called for the withdrawal of such reservations in its declaration. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 26, U.N. Doc. A/CONF.157/23 (July 12, 1993) [hereinafter *Vienna Declaration*].

48. *Optional Protocol to CEDAW*, UNITED NATIONS, <http://www.un.org/womenwatch/daw/cedaw/protocol> (last visited Jan. 31, 2011).

49. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, art. 2, U.N. Doc. A/RES/54/4 (Oct. 15, 1999) [hereinafter *Optional Protocol*].

50. *Id.* art. 8.

51. CHARLESWORTH & CHINKIN, *supra* note 17, at 220.

52. *Id.* at 221 (citations omitted).

53. *Id.* at 220.

54. See *Glossary of Gender Terms and Concepts*, U.S. AGENCY FOR INT’L DEV., 1 (2008), [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/wid/pubs/Glossary\\_Handout.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/Glossary_Handout.pdf) (last visited Jan. 31, 2011) (Equity can be defined as “the processes used to achieve gender

has been rejected by the CEDAW Committee,<sup>55</sup> which has repeatedly called reporting countries' attention to the distinction between equity and equality as a standard, both in its dialogues with country delegates and in its concluding comments or observations on the country reports.<sup>56</sup> It has noted that the terms "equity" and "equality" are not synonymous or interchangeable, and that the Convention is directed toward eliminating discrimination against women and ensuring *de jure* (formal) and *de facto* (substantive) equality between women and men.<sup>57</sup> Indeed, the equity standard is sometimes advocated by governments seeking to avoid the requirements of formal equality.<sup>58</sup>

It has also been suggested that women-specific conventions have marginalized or disadvantaged women.<sup>59</sup> The Human Rights Committee and mainstream institutions and NGOs have often subordinated women's concerns to what could be regarded as more 'global' issues. As a result, the establishment of separate conventions and measures for women very often results in the creation in what has come to be known as a "women's ghetto," which has a lower priority than more mainstream human rights issues.<sup>60</sup> Since 1977, an objective

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equality. Equity involves fairness in representation, participation, and benefits afforded to males and females. The goal is that both groups have a fair chance of having their needs met and that they have equal access to opportunities for realizing their full potential as human beings." Alternatively, equality is when "males and females have equal rights, freedoms, conditions, and opportunities for realizing their full potential . . . and benefit[] from economic, social, cultural, and political development." With the equality standard, "society values males and females equally for their similarities and differences and the diverse roles they play.").

55. Comm. on the Elimination of Discrimination Against Women, *Concluding Comments*, 37th Sess., Jan. 25, 2007, ¶ 16, U.N. Doc. CEDAW/C/COL/CO/6 (Feb. 2, 2007) [hereinafter *Concluding Comments of the 37th Sess.*]; Comm. on the Elimination of Discrimination Against Women, 36th Sess., 753d mtg. at 7-8, U.N. Doc. CEDAW/C/SR.753 (Aug. 18, 2006); see also Alda Facio & Martha I. Morgan, *Equity or Equality for Women? Understanding CEDAW's Equality Principles*, 60 ALA. L. REV. 1133, 1139, 1141 (2009) (discussing concerns over the way equity and equality are discussed in CEDAW) (citations omitted).

56. *E.g.*, Comm. on the Elimination of Discrimination Against Women, *Concluding Comments*, 38th Sess., May 18, 2007, ¶¶ 14-15, U.N. Doc. CEDAW/C/VUT/CO/3 (June 11, 2007).

57. See *id.* ¶ 15 (noting that "equity" and "equality" are not interchangeable). Further, the Committee prefers the concept designated by the term equality. "[T]he State party's goal often is to achieve equity for women rather than to accelerate the achievement of *de facto* equality of women with men. It also notes that the concept of equity, rather than equality, is often used in the design and implementation of policies and programmes for women." *Concluding Comments of the 37th Sess.*, *supra* note 55, ¶ 16.

58. Cf. Facio & Morgan, *supra* note 55, at 1136 (noting that governments and NGOs in Latin America preferred "equity" over "equality" policies).

59. Anne Gallagher, *Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System*, 19 HUM. RTS. Q. 283, 285 (1997).

60. Laura Reanda, *The Commission on the Status of Women*, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 267 (Philip Alston ed., 1992) (citation omitted).

of the United Nations has been to mainstream a gender perspective in policies and programs.<sup>61</sup>

The United Nations has also been instrumental in formulating treaties that are not gender specific but which address issues that overwhelmingly affect women's human rights. One example is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>62</sup> The Protocol supplements the United Nations Convention Against Transnational Organized Crime.<sup>63</sup> The U.S. State Department estimates that 2.4 million people are victims of trafficking at any given point in time.<sup>64</sup> Approximately 80% of those trafficked are women and 50% children, many of whom are trafficked for sexual exploitation.<sup>65</sup> Women and female children are particularly vulnerable to this slavery-like practice, due largely to the persistent inequalities they face in status and opportunity worldwide and the lucrative nature of the business.

Early conventions, under the auspices of the United Nations, addressed trafficking in women or trafficking in children for purposes of sexual exploitation separately.<sup>66</sup> Both the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the 1979 CEDAW Convention prohibited the exploitation of prostitution of women.<sup>67</sup>

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61. 13 THE UNITED NATIONS AND THE PROTECTION OF THE RIGHTS OF WOMEN vii (Masha Fedorova & Willem-Jan van der Wolf eds., 2006):

The Agreed Conclusions at the 1997 Economic and Social Council Meeting (ECOSOC) outlined the basic components of this process. Specifically, the Secretary General called on the heads of all UN funds and agencies to: formulate specific strategies for ensuring that gender issues are brought into the mainstream of organizational activities; systematically use gender analysis of information disaggregated by sex and age; carry out sector-specific gender surveys and gender-sensitive studies on particular issues in preparation of reports and operational activities; [and] prepare medium-term plans and programme budgets in such a manner that a gender perspective is apparent.

*Id.* at vii-viii.

62. G.A. Res. 55/25 (II), art. 2, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

63. G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

64. *Trafficking in Persons—An Affront to Human Dignity*, 6 HUM. SEC. AT THE UNITED NATIONS 1 (Winter 2009/2010) [hereinafter *Trafficking in Persons*].

65. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 19 (2005).

66. *See, e.g.*, Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271 [hereinafter Convention on Traffic and Exploitation]; Int'l Labour Org. [ILO], *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, art. 3, 38 I.L.M. 1207, June 17, 1999.

67. Convention on Traffic and Exploitation, *supra* note 66, art. 1; CEDAW, *supra* note 35, art. 6. Trafficking of children and child prostitution are explicitly prohibited by the 1989 Convention on the Rights of the Child, which also prohibits "the exploitative use of children in pornographic performances and materials" and "other unlawful sexual practices."

With the fall of the Berlin Wall in 1989, human trafficking has become the fastest-growing criminal industry in the world, with the total annual revenue for trafficking in persons estimated to be \$32 billion.<sup>68</sup> Collaboration between states, and oversight by international bodies, is necessary to address this issue. Thus, the Protocol to the U.N. Convention Against Transnational Organized Crime, which specifically addresses trafficking, is an important milestone.

For the first time, a definition of trafficking has been agreed upon. The Protocol defines trafficking as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs . . . .<sup>69</sup>

The definition is broad and not only reaches trafficking for purposes of sexual exploitation, but also forced labor and most forms of modern day slavery, including practices such as domestic servitude, child soldier, and forced or bonded labor.<sup>70</sup> The Protocol is unique in that it focuses on the victims, who are overwhelmingly female, and requires state parties not only to prevent and combat trafficking in persons, but also to assist victims of trafficking.<sup>71</sup>

While enforcement of the Protocol is unfortunately weak, it shifts the emphasis to helping victims, which had not been accomplished by prior policies. This in turn forms the basis for subsequent legislation by state parties.

Taken together, these programs and treaties represent a step forward in identifying and focusing world attention on issues that impact women, and in advancing women’s legal rights.

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Convention on the Rights of the Child, art. 34, 1577 U.N.T.S. 3, Nov. 20, 1989.

68. *Trafficking in Persons*, *supra* note 64, at 1.

69. G.A. Res. 55/25 (II), *supra* note 62, art. 3.

70. In bonded labor, a victim is forced into work to pay off debts to the owners of the operations. Examples of such operations are sweatshops, brothels, restaurants, and fields. TRAFFICKING IN PERSONS REPORT, *supra* note 65, at 15.

71. G.A. Res. 55/25 (II), *supra* note 62, pmb1.

### B. *Developments in International Criminal Law*

Another major advancement with respect to women's human rights, for which the United Nations is largely responsible, is the emergence of international criminal law and the establishment of International Criminal Courts,<sup>72</sup> both *ad hoc* and permanent, which address the most serious human rights violations that affect women.

At the close of World War II, the world community was shocked by the horrendous disclosure that millions of people were exterminated in concentration camps, tortured, or forced into slave labor.<sup>73</sup> At the war's end, the victorious Allies established military tribunals to try those "most culpable for the atrocities."<sup>74</sup> The International Military Tribunals in Nuremberg (IMT) and Tokyo (IMTFE) were established with jurisdiction over war crimes, crimes against humanity, and crimes against the peace.<sup>75</sup> It was thought that the prosecution of crimes against the peace would be the outstanding legacy of the post-World War II tribunals,<sup>76</sup> but this charge proved to be the most controversial aspect of the indictment. The Nuremberg principles were affirmed by the United Nations General Assembly in 1950.<sup>77</sup> They included the principle that an individual could be held responsible for violating international law,<sup>78</sup> thus affirming criminal responsibility for individuals for violations of international law.

The indictments for the Nuremberg Tribunal failed to include any charges of sexual violence, even though sexual violence, including rape and sexual slavery, was extensively documented throughout the war and occupation.<sup>79</sup> In part because the focus of the trial was

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72. *About the Court*, INT'L CRIMINAL COURT, <http://www.icc-cpi.int/Menus/ICC/About+the+Court/> (last visited Jan. 31, 2011).

73. Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles*, 21 BERKELEY J. INT'L L. 288, 300 (2003).

74. *Id.*

75. *Id.* at 300-01 (citations omitted).

76. *Id.* (citing John Murphy, *Crimes Against Peace at the Nuremberg Trial*, in THE NUREMBERG TRIAL AND INTERNATIONAL LAW 141 (George Ginsburg & V.N. Kudriavtsev eds., 1990)).

77. Formation of the Nürnberg Principles, G.A. Res. 488 (V), at 77, U.N. Doc. A/RES/488(V) (Dec. 12, 1950). The principles establish liability for those who commit, or who are complicit in, international law crimes, regardless of internal law, or that the individual was acting within the scope of their official duty or under a government order. The principles also establish the right to a fair trial. *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, [1950] 2 Y.B. Int'l L. Comm'n, 191-93, U.N. Doc. A/CN.4/SER.A/1950/Add.1.

78. *Id.* at 191.

79. Askin, *supra* note 73, at 301.

on those responsible for waging aggressive war, sexual violence was largely ignored.<sup>80</sup>

The Tokyo Indictment included “allegations of gender-related crimes: it characterized the rape of civilian women and medical personnel as ‘inhumane treatment,’ ‘mistreatment,’ ‘ill-treatment,’ and a ‘failure to respect family honour and rights,’ and prosecuted these crimes under the ‘Conventional War Crimes’ provision in the Charter.”<sup>81</sup>

The World War II tribunals were the foundation for the *ad hoc* criminal tribunals that were established in the 1990s to deal with massive human rights violations that were occurring in Europe and Africa.<sup>82</sup> These *ad hoc* courts were established in 1993 through Resolutions of the United Nations Security Council and turned international attention to gender based crimes.<sup>83</sup>

Following the war in Serbia and Bosnia, the U.N. appointed a Commission of Experts to investigate the abuses that had occurred during the conflict.<sup>84</sup> After an extensive investigation, the systematic detention and rape of women and girls, in addition to the mass killing of men and boys, during the conflict was documented.<sup>85</sup> After deeming the Balkan conflict a threat to peace and security, the Security Council established the International Criminal Tribunal for the

80. Charter of the International Military Tribunal—Annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, pmbl. (London Agreement), Aug. 8, 1945; CHARLES I. BEVANS, 4 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA: 1776-1949 22, 28 (1979); see also John F. Murphy, *Crimes Against Peace at the Nuremberg Trial*, in THE NUREMBERG TRIAL AND INTERNATIONAL LAW 141, 141 (George Ginsburg & V.N. Kudriavtsev eds., 1990) (discussing the various counts and charges filed against the wagers of war and conspirators).

81. Askin, *supra* note 73, at 302 (citation omitted).

82. David S. Bloch & Elon Weinstein, *Velvet Glove and Iron Fist: A New Paradigm for the Permanent War Crimes Court*, 22 HASTINGS INT’L & COMP. L. REV. 1, 15-16 (1998); Laurie A. Cohen, Note, *Application of the Realist and Liberal Perspectives to the Implementation of War Crimes Trials: Case Studies Of Nuremberg And Bosnia*, 2 UCLA J. INT’L L. & FOREIGN AFF. 113, 163 (1997); Karl Arthur Hochkammer, Note, *The Yugoslav War Crimes Tribunal: The Compatibility of Peace, Politics, and International Law*, 28 VAND. J. TRANSNAT’L L. 119, 168 (1995).

83. S.C. Res. 827, ¶ 2, U.N. Doc. S/RES/827 (May 25, 1993); S.C. Res. 955, ¶ 3, U.N. Doc. S/RES/955 (Nov. 8, 1994).

84. G.A. Res. 48/88, ¶ 25, U.N. GAOR, 48th Sess., 84th plen. Mtg. At 42, U.N. Doc. A/Res/48/88 (Dec. 20, 1993); U.N. Secretary-General, Letter dated Feb. 9, 1993 from the Secretary-General addressed to the President of the Security Council, ¶ 66, U.N. Doc. S/25274 (Feb. 9, 1993); see also M. Cherif Bassiouni, *The Commission of Experts Established pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, in 3 INTERNATIONAL CRIMINAL LAW 395, 395 (Martinus Nijhoff 1999) (discussing the passage of Security Resolution 780 and its effects).

85. U.N. Doc. S/25274, *supra* note 84, at 1.

Former Yugoslavia (ICTY) and specifically authorized the prosecution of rape as a crime against humanity.<sup>86</sup>

Less than a year after the ICTY was established, genocide occurred in Rwanda in which more than 800,000 men, women and children were murdered, and hundreds of thousands of others were tortured, raped, and otherwise abused.<sup>87</sup> In response, the Security Council established the International Criminal Tribunal for Rwanda (ICTR) to deal with those most responsible for the mass atrocities.<sup>88</sup> Like the ICTY, the ICTR explicitly authorized the prosecution of rape as a crime against humanity and a war crime.<sup>89</sup> Testimony taken at the tribunals contained examples of forced pregnancy, forced abortion, sexual slavery, forced marriage, sexual mutilation, and sexual humiliation.<sup>90</sup>

In a landmark decision, the *Akayesu* judgment delivered by the Trial Chamber of the Rwanda Tribunal in 1998, explicitly recognized rape as an instrument of genocide and a crime against humanity.<sup>91</sup> Jean-Paul Akayesu, the former *bourgmestre* (mayor) of the Taba commune in Rwanda was convicted of, among other crimes, using rape as an instrument of genocide and as a crime against humanity, and was sentenced to life imprisonment.<sup>92</sup> The tribunal defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”<sup>93</sup> The definition of sexual violence is broader and includes, “any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.”<sup>94</sup> With respect to rape as an instrument of genocide, the Court stated, “[l]ike torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal

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86. *About the ICTY*, INT'L CRIMINAL TRIBUNAL FORMER YUGOSLAVIA, <http://www.icty.org/sections/AbouttheICTY> (last visited Jan. 31, 2011).

87. *Genocide in Rwanda*, UNITED HUMAN RIGHTS COUNCIL, [http://www.unitedhumanrights.org/genocide\\_in\\_rwanda.htm](http://www.unitedhumanrights.org/genocide_in_rwanda.htm) (last visited Jan. 31, 2011).

88. S.C. Res. 955, ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994).

89. Kelly D. Askin, *A Decade of the Development of Gender Crimes in International Courts and Tribunals: 1993 to 2003*, 11 HUM. RTS. BRIEF 16, 16-17 (2004).

90. HUM. RTS. WATCH/AFR., *SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH*, 2 (1996), available at <http://www.hrw.org/reports/1996/09/24/Shattered-lives>.

91. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, ¶ 685 (Sept. 2, 1998).

92. The indictment charged Akayesu with fifteen counts of war crimes, crimes against humanity, rape, and genocide for extermination, murder, torture, and cruel treatment committed in his commune. He was convicted on nine counts. *Id.* ¶ 744.

93. Askin, *supra* note 73, at 319 (quoting *Akayesu*, ¶ 688).

94. *Id.* (quoting *Akayesu*, ¶ 688).

dignity, and rape in fact constitutes torture' when all of the elements of torture are satisfied."<sup>95</sup>

Through the jurisprudence developed by the Rwanda Tribunal and the Yugoslav Tribunal, it is now accepted that international crimes include gender-based violence, and that individuals can be held accountable in international tribunals.<sup>96</sup>

Although the creation of an International Criminal Court (ICC) was contemplated by the United Nations almost from its inception,<sup>97</sup> the Court proved to be a casualty of the Cold War. In tandem with the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide and the various Geneva Conventions, the General Assembly asked the International Law Commission to examine the possibility of creating a permanent international criminal court.<sup>98</sup> By the early 1950s, the "Commission had produced two draft statutes, but the project was shelved when it became apparent that the political climate of the Cold War made such a court impracticable."<sup>99</sup> Both the U.S.S.R. and the United States were concerned that the crime of aggression or crimes against the peace would politicize the court.<sup>100</sup> It was not until 1989, through the prodding of Trinidad and Tobago who sought international assistance in dealing with the drug trade plaguing both countries, that the issue was revisited.<sup>101</sup>

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95. *Id.* at 319-20 (quoting *Akayesu*, ¶ 687) (alteration in original). Torture is defined as an intentional act committed by or with consent of a public official that causes severe pain or suffering for the purposes of obtaining information, punishment, or intimidation. G.A. Res. 39/46, art. 1, U.N. Doc. A/RES/39/46 (Dec. 10, 1984).

96. Gabrielle Kirk McDonald, *Crimes of Sexual Violence: The Experience of the International Criminal Tribunal*, 39 COLUM. J. TRANSNAT'L L. 1, 7 (2000); Martina Vandenberg, *Kosovo: Rape as a Weapon of "Ethnic Cleansing,"* 12(3) HUM. RTS. WATCH (2000); Betty Murungi, *Prosecuting Gender Crimes at the International Criminal Tribunal for Rwanda*, COAL. FOR WOMEN'S HUMAN RIGHTS IN CONFLICT SITUATIONS, [http://www.womensrightscoalition.org/site/publications/vol14No1/prosecutinggendercrimesicr\\_en.php](http://www.womensrightscoalition.org/site/publications/vol14No1/prosecutinggendercrimesicr_en.php) (last visited Jan. 31, 2011).

97. Gary T. Dempsey, *Reasonable Doubt: The Case against the Proposed International Criminal Court*, 311 CATO POL'Y ANALYSIS 3 (1998), available at <http://www.cato.org/pubs/pas/pa-311.html>.

98. *Id.*

99. *Id.*

100. John R. Bolton, *Courting Danger: What's Wrong with the International Criminal Court*, NAT'L INT., (1998), available at [www.aei.org/article/9791](http://www.aei.org/article/9791); Marlene Wind, *Challenging Sovereignty? The USA and the Establishment of the International Criminal Court*, 2 ETHICS & GLOBAL POL. 83, 87, 89 (2009).

101. The international community stalled on the concept of aggression as a crime because both the U.S.S.R. and the U.S. were concerned that the addition of the crime would result in politicizing the Court. In 1998, the International Law Commission issued its report on the establishment of an International Criminal Court. *Analysis of Issues in the Draft Statute*, UNITED NATIONS, [www.un.org/icc/statute/htm#intro](http://www.un.org/icc/statute/htm#intro) (last visited Jan. 31, 2011).

In 1998, building upon the legacy and the momentum of the *ad hoc* tribunals established earlier, a diplomatic conference was held in Rome to consider the creation of a permanent International Criminal Court.<sup>102</sup> NGOs, particularly those focusing on women's issues, were strong partners with the U.N. and were instrumental in focusing the attention of the Conference on issues of gender violence and in having these issues included in the formal drafts of the Rome Statute for the International Criminal Court.<sup>103</sup> The Court became a reality in 2002, after its 60th state ratification.<sup>104</sup> Based in The Hague, the ICC is a permanent court with jurisdiction over war crimes, crimes against humanity, genocide, and aggression.<sup>105</sup> The statute for the Court explicitly authorizes the prosecution of rape, sexual slavery, forced prostitution, forced sterilization, forced pregnancy, and "any other form of sexual violence also constituting a serious violation of article 3" as war crimes and crimes against humanity.<sup>106</sup>

The International Criminal Court will undoubtedly build on the rich jurisprudence of the ICTY and ICTR, with respect to prosecuting gender-based violence. In addition, the statute for the Court requires states in selecting judges to "take into account the need . . . for . . . fair representation of female and male judges."<sup>107</sup> Legal experience, including exposure to violence against women, should also be taken into account.<sup>108</sup>

The experience of both the ICTY and ICTR indicate that the presence of women in such tribunals do make a difference. For example, in the *Akayesu* case before the ICTR, questions by the sole female judge prompted the prosecutor to amend the indictment to include the charge of genocide.<sup>109</sup> At the present time, eleven of the nineteen judges on the ICC are women (most with expertise in gender crimes).<sup>110</sup> Thus, it seems certain that gender violence will be viewed

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102. Rome Statute of the International Criminal Court pmbl., July 17, 1993, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

103. See Yvonne M. Dutton, *Commitment to the International Criminal Court: Do States View Strong Enforcement Mechanisms as a Credible Threat?*, 4 (One Earth Future Found., Working Paper), available at [http://www.oneearthfuture.org/siteadmin/images/files/file\\_43.pdf](http://www.oneearthfuture.org/siteadmin/images/files/file_43.pdf) (listing the number of NGOs that attended the U.N. Conference in Rome).

104. Rome Statute, *supra* note 102, art. 126. However, China, Russia and the U.S. are not parties to this Treaty. *The State Parties to the Rome Statute*, INT'L CRIMINAL CT., <http://www.icc-cpi.int/Menus/ASP/states+parties/> (last visited Jan. 31, 2011).

105. Rome Statute, *supra* note 102, arts. 3-5.

106. *Id.* art. 8.2(e)(vi).

107. *Id.* art. 36.8(a)(iii).

108. *Id.* art. 36.3(b)(i)-(ii).

109. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Amended Indictment, ¶ 23 (Sept. 2, 1998).

110. *The Chambers*, INT'L CRIMINAL COURT, <http://www2.icc-cpi.int/Menus/ICC/>

as an international crime as well as a gross violation of human rights, rather than as a mere casualty of war.

These remarkable developments in international criminal law are attributable to the actions of the U.N. and its member states as well as to the efforts of NGOs who have insisted that gender-based crimes be addressed.

### *C. Violence Against Women and Other U.N. Programs*

A third area in which the U.N. has been instrumental in addressing issues and human rights violations that impact women are those efforts to eradicate violence against women.

According to World Bank data, “[w]omen aged 15-44 are more at risk from rape and domestic violence than from cancer, car accidents, war and malaria.”<sup>111</sup> Additionally, up to seventy percent of women worldwide are subject to violence throughout their lifetime.<sup>112</sup> “Violence against women takes many forms—physical, sexual, psychological and economic. These forms of violence are interrelated and affect women from before birth to old age.”<sup>113</sup> They include acts such as female infanticide, inadequate nutrition for girl babies, rape, and female genital mutilation.<sup>114</sup>

Gender violence sometimes originates in the womb and might persist throughout the early years of a girl child’s life. Nobel Prize winning economist Amartya Sen estimates that more than 100 million women are missing due to sex-selection and inadequate medical care, food and social services provided to girl children as compared to boy children.<sup>115</sup> Nicholas Kristof and Sheryl WuDunn call this “gendercide,” and note that in the last fifty years, more girls have been killed simply because they were girls, than all the men who were

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Structure+of+the+Court/Chambers/The+Judges/ (last visited Jan. 31, 2011).

111. UNiTE to End Violence Against Women, *Violence Against Women: The Situation*, UNITED NATIONS, <http://www.un.org/en/women/endviolence/situation.shtml> (last visited Jan. 31, 2011).

112. *Id.*

113. *Id.*

114. *Id.*

115. Amartya Sen, *More Than 100 Million Women are Missing*, 37 N.Y. REV. BOOKS (1990), available at <http://ucatlans.edu/gender/sen100m.html>; see also NICHOLAS D. KRISTOF & SHERYL WUDUNN, *HALF THE SKY: TURNING OPPRESSION INTO OPPORTUNITY FOR WOMEN WORLDWIDE* xv, 61-67 (2009) (supporting the estimate and discussing forms of violence committed against women and girls in various countries); Martha Nussbaum, *Seeing Women’s Rights as a Key to Countries’ Progress*, N.Y. TIMES, Sept. 8, 2009, <http://www.nytimes.com/2009/09/08/books/08nussbaum.html> (invoking the phrase “diffuse cruelty of indifference,” which refers to the systematic undervaluation of women (internal quotation marks and citation omitted)).

killed in battle during the twentieth century.<sup>116</sup> Further, “[m]ore girls are killed in this routine ‘gendercide’ in any one decade than people were slaughtered in all the genocides of the twentieth century.”<sup>117</sup>

Violence against women is not confined to a specific culture, region or country, or to particular groups of women within a society. The most common form of violence experienced by women globally is physical violence, inflicted by an intimate partner, where women are “beaten, coerced into sex or otherwise abused.”<sup>118</sup> It is estimated that, “[w]orldwide . . . one in five women will be a victim of rape or attempted rape in her lifetime.”<sup>119</sup> Moreover, recent reports and studies indicate that during times of financial and economic instability, the incidence of domestic violence increases.<sup>120</sup> The United Nations Population Fund estimates as many as 5,000 women annually are victims of so-called “honour killing.”<sup>121</sup>

While violence against women has persisted in all societies, it is only in the last two decades that international attention has focused on this scourge. The existing international human rights norms and practices are the result of a male-centric approach to human rights norms and international law in which the violation of the human rights of women have been ignored. The Western liberal tradition draws a distinction between public life encompassing work, politics, and macro-economics and the private sphere including home, children, and domestic concerns often gravely affecting the responsibilities of women.<sup>122</sup> Traditionally, the law had functioned in the public sphere and avoided entanglement in the lives of those it governs.<sup>123</sup> This public/private distinction is magnified at the international level, which purports to govern relations among states.<sup>124</sup> Consequently, human rights violations specific to women remained largely unregulated and have, until recently, continued without international legal sanctions.<sup>125</sup>

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116. KRISTOF & WUDUNN, *supra* note 115, at xvii.

117. *Id.*

118. See U.N. POPULATION FUND, STATE OF WORLD POPULATION 2005 65, available at [http://www.unfpa.org/swp/2005/pdf/en\\_swp05.pdf](http://www.unfpa.org/swp/2005/pdf/en_swp05.pdf) (describing the average number of women who experience physical violence in their lifetime).

119. *Id.* (citation omitted).

120. *The Increased Importance of the Violence Against Women Act in Times of Economic Crisis, Hearing Before the Sen. Comm. on the Judiciary*, 111th Cong. 3-4 (2010) (statement of Susan B. Carbon, Director, Office on Violence Against Women).

121. U.N. POPULATION FUND, STATE OF WORLD POPULATION 2000 29, available at <http://www.unfpa.org/swp/2000/pdf/english/chapter3.pdf>.

122. CATHARINE MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 50-52 (1987); Christine Chinkin, *A Critique of the Public/Private Dimension*, 10 EUR. J. INT'L L. 387, 390 (1999).

123. See MACKINNON, *supra* note 122 (describing this dichotomy thematically throughout the text).

124. Chinkin, *supra* note 122, at 390.

125. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J.

In 1993, the first U.N. Conference on Human Rights was held in Vienna to assess the status of human rights throughout the world.<sup>126</sup> Primarily through the efforts of women NGOs who participated in the deliberations, the Platform of Action adopted at the Conference recognized that the lives of women were not taken into account in the contemporary human rights system and affirmed women's rights as human rights.<sup>127</sup> The United Nations Conference could well be considered a watershed in the protection of human rights of women.<sup>128</sup> The Vienna Declaration and Programme of Action promulgated at the Conference expressly recognized that "[t]he human rights of women . . . are an inalienable, integral and indivisible part of universal human rights."<sup>129</sup> The Declaration identified numerous gender-specific abuses, including those resulting from cultural prejudice, such as violence, sexual harassment, and sexual exploitation, as human rights violations that were incompatible with the dignity and worth of the human person.<sup>130</sup> Until that time, the General Assembly had not issued any statement recognizing or condemning violence against women.<sup>131</sup> In response to the Vienna Programme of Action, in December 1993, the U.N. General Assembly adopted a Declaration on the Elimination of Violence Against Women that recognized violence against women as an issue of international concern.<sup>132</sup> Violence against women is defined as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>133</sup> The Declaration rejects the concept of cultural relativism in addressing violence against women.<sup>134</sup> Significantly, the

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INT'L L. 613, 615 (1991) (noting that "[i]nternational law is a thoroughly gendered system" in which women's rights are often marginalized).

126. *Vienna Declaration*, *supra* note 47, pmb1.

127. *Id.*

128. Maria Sophia Aguirre & Ann Wolfgram, *United Nations Policy and the Family: Redefining the Ties that Bind: A Study of History, Forces and Trends*, 16 BYU J. PUB. L. 113, 162 (2002); Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 266 (1977); Ruth B. Philips, *Too Close To Home? International Criminal Law, War Crimes and Family Violence*, 24 T. JEFFERSON L. REV. 229, 232 n.11 (2002).

129. *See Vienna Declaration*, *supra* note 47, art. 18 (describing the human rights of women).

130. *Id.*

131. *See id.* (noting that the Vienna Declaration urges Member States to step-up their promotion of human rights for women and girls).

132. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, pmb1., U.N. Doc. A/RES/48/104 (Feb. 23, 1994).

133. *Id.* art. 1.

134. *See id.* art. 4 (nothing that "[s]tates . . . should not invoke any custom, tradition or

Declaration urges states to “[e]xercise due diligence to prevent, investigate and . . . punish acts of violence against women, whether those acts are perpetrated by the State or by private persons,”<sup>135</sup> thus easing the distinction between the public and the private sphere.

In April 1994, Radhika Coomaraswa was appointed as the first U.N. Special Rapporteur on Violence Against Women to focus on violence in the home (domestic violence), in the community (prostitution, rape, pornography), and by the state (abuse in prisons and in armed conflicts).<sup>136</sup>

Rape has long been used as a tactic of war, with violence against women during or after armed conflicts reported in every international or non-international war-zone.<sup>137</sup> For example, between 250,000 and 500,000 women were raped during the 1994 genocide in Rwanda.<sup>138</sup> On June 19, 2008, the United Nations Security Council took a monumental step with respect to violence against women by passing Resolution 1820 on Sexual Violence in Armed Conflict.<sup>139</sup> It reaffirmed its “commitment to ending sexual violence as a weapon of war and as a means to terrorize populations and destroy communities.”<sup>140</sup> Sexual violence is identified as “a tactic of war used to humiliate, dominate, instill fear in, and/or forcibly relocate civilian members of a community or ethnic group.”<sup>141</sup> “Further, the Council noted that violence can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security”<sup>142</sup> and decided to remain apprised of the matter.<sup>143</sup>

In 2008, Secretary General Ban Ki-moon launched the global campaign UNiTE to end violence against women.<sup>144</sup> In doing so he

religious consideration to avoid their obligations with respect to” ending gender-based violence).

135. *Id.* art. 4(c).

136. Rep. of the Special Rapporteur on Violence Against Women, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development*, H.R. Council, U.N. Doc. A/HRC/11/6 (June 23, 2009).

137. See Katherine Jones, *Rape as a Tool of Warfare*, ASSOCIATE CONTENT (Apr. 2, 2008), [http://www.associatedcontent.com/article/690379/ape\\_as\\_a\\_tool\\_of\\_warfare.html?cat=49](http://www.associatedcontent.com/article/690379/ape_as_a_tool_of_warfare.html?cat=49) (describing how rape has been a part of the discourse of war since the Middle Ages).

138. ANNE-MARIE L.M. DE BROUWER, SUPRANATIONAL CRIMINAL PROSECUTION OF SEXUAL VIOLENCE: THE ICC AND THE PRACTICE OF THE ICTY AND THE ICTR 11 (2005) (citation omitted).

139. 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, 133 (2009). To view the actual Resolution, see S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008).

140. Ndulo, *supra* note 139, at 133 (citing S.C. Res 1820, U.N. Doc. S/RES/1820 (June 19, 2008)).

141. *Id.*

142. *Id.*

143. *Id.*

144. Press Release, Secretary-General, Secretary-General Says Violence Against Women

stated, “there is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, never tolerable.”<sup>145</sup>

The Secretary-General’s campaign will run through 2015.<sup>146</sup> “UNiTE calls on governments, civil society, women’s organizations, young people, the private sector, the media and the entire U.N. system to join forces in addressing the global pandemic of violence against women and girls. By 2015 UNiTE aims to achieve the following . . . goals in all countries”:<sup>147</sup>

1. Amend existing legislation and “[a]dopt and enforce national laws to address and punish all forms of violence against women and girls”;<sup>148</sup>
2. “Address sexual violence in conflict” and assure that women are included in the Peacemaking Process;<sup>149</sup> and
3. “Strengthen data collection on the prevalence of violence against women and girls.”<sup>150</sup>

As the campaign is now in formation, significant resources have been committed by the U.N.,<sup>151</sup> the Security Council has been involved and awareness has been raised.

## II. OBSTACLES TO U.N. EFFORTS

Despite the very positive achievements of the United Nations in addressing inequality, disparities and vulnerabilities of women in virtually all sectors of society, its record and efforts in addressing issues relating to its own personnel are disappointing.

The reputation of the United Nations has been tarnished by the actions of some of its peacekeeping personnel charged with sexual abuse, and there is widespread agreement that allegations of sexual harassment claims brought by U.N. staff members within the U.N.

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Never Acceptable, Never Excusable, Never Tolerable, as He Launches Global Campaign on Issue, U.N. Press Release SG/SM/11437 (Feb. 25, 2008).

145. *Id.*

146. *Id.*

147. UNiTE to End Violence Against Women, *About UNiTE*, UNITED NATIONS, <http://www.un.org/en/women/endviolence/about.shtml> (last visited Jan. 31, 2011).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

have been mishandled.<sup>152</sup> In addition, despite persistent requests from within the U.N. system itself and from NGOs monitoring the status of women at the United Nations, a glass ceiling continues to impede the promotion of women.

#### A. *Sexual Abuse by U.N. Peacekeepers*<sup>153</sup>

Despite widespread reports and documentation of sexual abuse by United Nations Peacekeepers dating back more than two decades,<sup>154</sup> there is not yet a sufficient mechanism in place to address these very serious offenses. Although the U.N. has been successful in setting norms and developing treaties in the area of gender equality,<sup>155</sup> it has been unsuccessful in its efforts to address the egregious acts of sexual abuse and exploitation committed by U.N. Peacekeepers.

“Sexual abuse and exploitation was first documented ‘in Bosnia, Herzegovina and Kosovo in the early 1990s, [and] then later in Mozambique, Cambodia, East Timor and Liberia.’”<sup>156</sup> Abuses included pedophilia, pornography and sexual assaults, but it was not until the widespread allegations of abuse emerged in the Democratic Republic of Congo in mid-2004 that high-level U.N. officials responded to the charges.<sup>157</sup> Then Secretary-General Kofi Annan acknowledged the seriousness of the charges, stating:

This is a shameful thing for the United Nations to have to say, and I am absolutely outraged by it. . . . I have long made it clear that my attitude to sexual exploitation and abuse is one of zero tolerance, without exception, and I am determined to implement this policy in the most transparent manner.<sup>158</sup>

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152. Stecklow, *supra* note 9.

153. For a fuller discussion of the topic, see Elizabeth F. Defeis, *U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity*, 7 WASH. U. GLOBAL STUD. L. REV. 185, 187-95 (2008).

154. *See id.* at 187 (noting that the first documented complaints of sexual abuse arose in the former Yugoslavia in the early 1990s).

155. Defeis, *supra* note 33, at 389-90 (citations omitted).

156. Defeis, *supra* note 153, at 187 (quoting *U.N. Reforms Aim to End Sexual Abuse by Peacekeepers*, GLOBAL POLICY FORUM, (2005), <http://www.globalpolicy.org/security/peacekpg/reform/2005/0510conduct.htm>) (alteration in original).

157. Ryan Balis, *Support for United Nations Justifiably Weakened by Financial, Sex and Human Rights Scandals*, NAT'L POL'Y ANALYSIS (2006), <http://www.nationalcenter.org/NPA545UNScandals.html>; Jonathan Clayton & James Bone, *Sex Scandal in Congo Threatens to Engulf UN's Peacekeepers*, TIMES (London), Dec. 23, 2004, <http://www.timesonline.co.uk/tol/news/world/article405213.ece>; *UN Sexual Allegations Double*, BBC NEWS, May 6, 2005, <http://news.bbc.co.uk/2/hi/americas/4521481.stm>.

158. Press Release, Secretary-General Kofi Annan, Secretary-General 'Absolutely Outraged' by Gross Misconduct by Peacekeeping Personnel in Democratic Republic of Congo, U.N. Press Release SG/SM/9605 (Nov. 19, 2004).

Recognizing that the procedures in place were inadequate and that a fundamental change was necessary, the Secretary-General appointed Prince Zeid Ra'ad Zeid Al-Hussein of Jordan to investigate the alleged abusers.<sup>159</sup> The report detailed pervasive abuse and exploitation of women and girls, most of which involved trading sex for money, food, or jobs.<sup>160</sup> Even more disturbing, victims of rape were often given gifts after being assaulted, in order to give the impression of prostitution, rather than rape.<sup>161</sup> So-called “‘peacekeeper babies’” were left with the victims of abuse, who were often abandoned by their families and had no means of support.<sup>162</sup>

However, more than a year after it was announced, the widely publicized zero tolerance policy by Annan was ignored. Prince Zeid, “‘in a confidential report obtained by *The Times*, said, ‘[t]he situation appears to be one of ‘zero-compliance with zero-tolerance’ throughout the mission.’”<sup>163</sup>

To mark the 60th anniversary of the U.N. in October 2005, *The New York Times* published a critical editorial on the sexual abuse by U.N. peacekeepers. It said:

Nothing discredits the United Nations more than the continuing sexual abuse of women and girls by soldiers belonging to its international peacekeeping missions. And yet almost a year after shocking disclosures about such crimes in Congo, far too little has been done to end the culture of impunity, exploitation and sexual chauvinism that permits them to go on. . . . When United Nations peacekeepers rape the people they were sent to protect and coerce women and girls to trade sex for food, as they were found to have done in Congo last winter, they defeat the purpose of their mission and exploit some of the world’s most vulnerable people.<sup>164</sup>

In January 2007, sexual exploitation by U.N. peacekeeping forces in southern Sudan was reported by the media, including the systematic

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159. *Id.*

160. A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations, in letter dated Mar. 24, 2005 from the Secretary-General to the President of the General Assembly, U.N. Doc. A/59/710, at 8 (Mar. 24, 2005).

161. *Id.*

162. *Id.* at 8, 9.

163. Clayton & Bone, *supra* note 157; *see also* SARAH MARTIN, REFUGEES INT’L, MUST BOYS BE BOYS? ENDING SEXUAL EXPLOITATION & ABUSE IN UN PEACEKEEPING MISSIONS iv, 6 (2005), available at <http://www.refugeesinternational.org/sites/default/files/MustBoysBeBoys.pdf> (discussing how the U.N.’s zero tolerance policy is meaningless rhetoric until it takes real action to “eliminate sexual exploitation and abuse and the tolerance of these activities throughout the United Nations”).

164. Editorial, *The Worse U.N. Scandal*, N.Y. TIMES, Oct. 24, 2005, <http://www.nytimes.com/2005/10/24/opinion/24mon3.html>.

abuse of children as young as twelve.<sup>165</sup> According to the report, the first allegations emerged shortly after the arrival of U.N. forces.<sup>166</sup>

In response to these new allegations, the newly appointed Secretary-General Ban Ki-moon reaffirmed the U.N.'s zero-tolerance policy and stated: "The UN standard on this issue is clear—zero tolerance meaning zero complacency and zero impunity. . . . It is the UN's policy to treat credible allegations of sexual exploitation and abuse as serious offences to be investigated by the Office of Internal Oversight Services (OIOS)."<sup>167</sup>

Later that year, however, 100 Sri Lankan peacekeepers were repatriated from Haiti following allegations that some had sexually exploited or abused children, according to a report in the *Wall Street Journal*.<sup>168</sup> "Soldiers allegedly had sex with at least nine minors, ranging in age from 10 to 16, in and around a U.N. camp . . . ." <sup>169</sup> They were paid with food or "as little as 75 cents."<sup>170</sup>

In 2008, Save the Children, a U.K. based NGO, urgently called for the appointment of an international watchdog to investigate cases of child abuse by aid workers and peacekeepers.<sup>171</sup> Its research established that desperate and starving children were victims and were coerced to sell sex for food, money, soap and even mobile phones.<sup>172</sup> While acknowledging that the U.N. had commented on the matter, the report stated that, in most cases, "statements of principle and good intent have yet to be converted into really decisive and concerted international action."<sup>173</sup>

In the first half of 2010, forty-five allegations of sexual exploitation and abuse by U.N. personnel in peacekeeping and political

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165. Kate Holt & Sarah Hughes, *UN Staff Accused of Raping Children in Sudan*, TELEGRAPH.CO.UK, Jan. 2, 2007, <http://www.telegraph.co.uk/news/worldnews/1538476/UN-staff-accused-of-raping-children-in-Sudan.html>.

166. *Id.*

167. Secretary-General Office of the Spokesperson, Statement Attributable to the Spokesperson for the Secretary-General on Allegations of Sexual Exploitation and Abuse by UN Personnel in Sudan (Jan. 3, 2007), <http://www.un.org/apps/sg/sgstats.asp?nid=2388>.

168. Steve Stecklow & Joe Lauria, *U.N. Peacekeepers Dodge Discipline*, WALL ST. J., Mar. 22, 2010, at A1, A18.

169. *Id.*

170. *Id.*

171. CORINNA CSÁKY, SAVE THE CHILDREN UK, NO ONE TO TURN TO: THE UNDER-REPORTING OF CHILD SEXUAL EXPLOITATION AND ABUSE BY AID WORKERS AND PEACEKEEPERS 24 (2008), available at [http://www.un.org/en/pseataaskforce/docs/no\\_one\\_to\\_turn\\_under\\_reporting\\_of\\_child\\_sea\\_by\\_aid\\_workers.pdf](http://www.un.org/en/pseataaskforce/docs/no_one_to_turn_under_reporting_of_child_sea_by_aid_workers.pdf).

172. *Id.* at 5.

173. *Id.* at v, 10 ("Few UN Agencies and NGOs collect detailed information on the abuse of children by their own personnel, and even fewer make this information publicly available.").

missions were received, eighteen of which involved minors; this represented an increase from the same period as the previous year.<sup>174</sup>

Despite the harrowing revelations and specific recommendations for reform contained in many U.N. reports and reports of NGOs monitoring the issue, sexual exploitation and abuse in U.N. Peacekeeping Operations persists. Peacekeeping missions are generally deployed in societies where the social fabric has been ripped apart by civil strife: the rule of law is absent, and family structures no longer exist where the local population endures severe economic and psychological hardship.<sup>175</sup> Under these conditions, power can be, and sometimes is, abused.

The masculine culture of Peacekeeping Operations often results in a “wall of silence” from outside accusations.<sup>176</sup> In traditionally male-dominated environments such as police departments, militaries and fraternities, this tradition is a bond that protects the members inside from outside accusations. Instances of abuse and exploitation are often unreported either to protect the reputation of the peacekeepers or because the so-called “whistle-blower” would be stigmatized.<sup>177</sup> Thus, instances of sexual abuse are often ignored.

The former U.N. High Commissioner for Human Rights in Bosnia said that officials “‘don’t want to know about [sexual misconduct] . . . . There is this whole ‘boys will be boys’ attitude about men visiting brothels. There’s a culture inside the UN where you can’t criticise it. That goes all the way to the top.’”<sup>178</sup> The United Nations has taken some measures to address the problem in the form of training and disciplinary measures for all civilian personnel, including experts on missions and independent contractors.<sup>179</sup> U.N. staff regulations have been amended to clarify that sexual exploitation and abuse constitute sexual misconduct and can result in disciplinary action, including dismissal.<sup>180</sup>

174. Neil MacFarquhar, *Abuse Allegations Reported in Peacekeeping Missions*, N.Y. TIMES, July 20, 2010, <http://query.nytimes.com/gst/fullpage.html?res=9B05EFDC133EF933A15754C0A9669D8B63>.

175. Anna Shotton, *A Strategy to Address Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel*, 39 CORNELL INT’L L.J. 97, 103 (2006).

176. See Eric Schmitt, *Wall of Silence Impedes Inquiry into a Rowdy Navy Convention*, N.Y. TIMES, June 14, 1992, at 1, 34 (describing lack of cooperation by aviators in sexual assault investigation).

177. See Dominic Hipkins, *Bosnia Sex Trade Shames UN*, SCOTSMAN.COM, Feb. 9, 2003, <http://www.scotsman.com/world/Bosnia-sex-trade-shames-UN.2400797.jp> (discussing a U.N. police officer, Kathryn Bolkovac, who was fired for exposing the sexual abuse committed by her male colleagues).

178. *Id.* (quoting Madeleine Rees, U.N. High Commissioner for Human Rights in Bosnia).

179. Criminal Accountability of United Nations Officials and Experts on Mission, in note dated Sept. 11, 2007 from the Secretariat, U.N. Doc. A/62/329, at 3 (Sept. 11, 2007) [hereinafter *Criminal Accountability*].

180. U.N. Secretary-General, *Secretary-General’s Bulletin: Staff Regulations*, U.N.

In addition, conduct and discipline teams have been established in peacekeeping missions to raise awareness of sexual exploitation and sexual abuse, and to promote onsite training to the peacekeepers.<sup>181</sup> There are currently fourteen Conduct and Discipline Teams (CDTs) covering nineteen peacekeeping and special missions.<sup>182</sup>

However, the problem with respect to accountability of military personnel has not been sufficiently addressed. Although each peacekeeping mission is comprised of both civilian and military personnel, the military component predominates.<sup>183</sup> At the present time, there are almost 124,000 personnel serving on 16 peace operations on 4 continents.<sup>184</sup> The United Nations lacks a military force and must rely on a relatively small number of countries, mainly developing countries, to staff the military operations.<sup>185</sup> Because “the U.N. pays about \$1,000 per month per soldier,”<sup>186</sup> peacekeeping is a source of income for such countries. Under the Status of Forces Agreement negotiated between the U.N. and the troop contributing country (TCC), all such troops are subject to the exclusive jurisdiction of the troop contributing state.<sup>187</sup>

This immunity cannot be waived by the Secretary-General since jurisdiction is exclusive to the TCC.<sup>188</sup> TCCs are united in their insistence that military personnel should not be subject to disciplinary action by the U.N. or by any other state, including the host state.<sup>189</sup> Unfortunately, however, troop contributors have a poor record of holding their personnel accountable for such violations. Often the perpetrators are sent home with no further action taken by the home country, and it is impossible for victims to determine what, if any, disciplinary action has been taken.<sup>190</sup> When information is requested by the U.N. about disciplinary actions in investigations, most of the

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Doc. ST/SGB/2006/4, at 13 (Jan. 1, 2006).

181. *Conduct and Discipline Teams*, U.N., <http://cdu.unlb.org/> (last visited Jan. 31, 2011).

182. *See id.* (listing the countries in which peacekeeping and special missions are located).

183. U.N. DEPT PEACEKEEPING OPERATIONS, FACT SHEET 1 (2010), <http://un.org/en/peacekeeping/documents/factsheet.pdf> (last visited Jan. 31, 2011).

184. *Id.*

185. FACT SHEET, *supra* note 183, at 1.

186. Stecklow & Lauria, *supra* note 168, at A18.

187. Criminal Accountability, *supra* note 179, at 2. Indeed, no country has been willing to subject its military contingents to the jurisdiction of a foreign nation.

188. U.N. Secretary-General, *Model Status-of Forces Agreement for Peacekeeping Operations: Rep. of the Secretary-General*, ¶¶ 47(b), 48, U.N. Doc. A/45/594 (Oct. 9, 1990).

189. *See* Stecklow & Lauria, *supra* note 168, at A18 (noting how TCCs oppose “external oversight of their troops”).

190. *Id.* (citing a 2007 investigation in which Morocco did not tell the U.N. what action it had taken against soldiers who allegedly sexually abused women during a U.N. mission).

time the TCC does not respond.<sup>191</sup> It is thus critical that this issue be addressed.<sup>192</sup>

In 2007, the General Assembly decided that the model Memorandum of Understanding (MOU) with TCCs should include the U.N. Standards of Conduct<sup>193</sup> but posits responsibility for investigation with the TCCs themselves. The U.N. investigates complaints only if the TCC is unwilling or unable to investigate.<sup>194</sup> It also affirms that TCCs have exclusive jurisdiction over military contingents.<sup>195</sup> However, the U.N. investigation unit, the Office of Internal Oversight Service (OIOS) has no authority to discipline soldiers and because of a lack of staff it can only probe so-called “‘priority’” cases.<sup>196</sup>

In 2008, through Resolution of the General Assembly, the U.N. adopted a Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel.<sup>197</sup> The strategy provided that complainants, victims and peacekeeper babies should receive basic assistance and support in the form of medical care, legal services, psychological support and maternal assistance.<sup>198</sup> However, it appears that in order for a child to qualify for benefits as a child “‘born as a result of sexual exploitation,’” paternity must first be established by a “‘competent national authority,’” which, in most circumstances, appears to be extremely difficult to accomplish.<sup>199</sup> Moreover, the Strategy provides that such support only needs to be provided through existing services.<sup>200</sup> While it is still too early assess the effectiveness of the Strategy, it appears to be another example of too little, too late.

The extraordinary and dangerous services performed by U.N. Peacekeepers were recognized in 1988 when they were awarded the Nobel Peace Prize for “‘represent[ing] the manifest will of the community of nations” and “‘mak[ing] a decisive contribution” to the resolution of conflict around the world.<sup>201</sup> The allegations of sexual abuse

191. *Id.*

192. In 2006, a group of legal experts was appointed by the Secretary General to examine the issue of holding U.N. staff accountable for criminal conduct with respect to instances of sexual abuse. The report proposed a new international convention to deal with the issue, but specially excluded military peacekeepers from its proposal coverage. Nevertheless, further action on the proposed convention has stalled. Criminal Accountability, *supra* note 179, at 1, 2.

193. *See id.* at 2 (discussing how certain misconduct will be punished).

194. Stecklow & Lauria, *supra* note 168, at A18.

195. Criminal Accountability, *supra* note 179, at 2.

196. Stecklow & Lauria, *supra* note 168, at A18.

197. G.A. Res. 62/214, at 1, U.N. Doc. A/RES/62/214 (Mar. 7, 2008).

198. *Id.* ¶¶ 6-7.

199. *Id.* ¶ 5(e).

200. *Id.* ¶ 10.

201. Press Release, Norwegian Nobel Comm., The Nobel Peace Prize 1988 (Sept. 29, 1988), available at [http://nobelprize.org/nobel\\_prize/peace/laureates/1988/press.html](http://nobelprize.org/nobel_prize/peace/laureates/1988/press.html).

have now tarnished the reputation of both the United Nations and the difficult work of the U.N. peacekeepers. While the issue of sexual abuse has been addressed in numerous Security Council resolutions, U.N. reports, press reports and reports of NGOs, reports of sexual abuse and official inaction continue to escalate. The rhetoric and good intentions must be translated into action. Although the Zero Tolerance Policy was announced in 2004, a U.N. official acknowledged, “[t]he ambition, of course, is to be zero tolerant . . . . But you have to be realistic.”<sup>202</sup> The Under-Secretary for Peacekeeping Operations commented with respect to allegations of sexual abuse by Moroccan troops: “It’s my biggest headache and heartache, this whole issue.”<sup>203</sup> While very positive steps have been taken, much remains to be done if indeed there is to be no impunity for perpetrators. The U.N. must take more forceful action and discipline of troops and must become a shared responsibility.

### *B. Personnel Policies of the U.N.*

Another area of concern within the United Nations structure itself is both the number of women in decision-making capacity and the treatment of all women on staff, particularly with respect to handling the widespread allegations of sexual harassment within the U.N.<sup>204</sup>

At the opening session of the U.N. General Assembly in 1946, Eleanor Roosevelt read “an open letter to the women of the world,” calling upon “[g]overnments of the world to encourage women everywhere to take a more active part in national and international affairs”<sup>205</sup> and calling on women themselves “to come forward and share in the work of peace and reconstruction as they did in war and resistance.”<sup>206</sup> Noting “[w]e hope their participation in the work of the United Nations Organization may grow and may increase in insight and in skill.”<sup>207</sup>

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202. Stecklow & Lauria, *supra* note 168, at A18 (quoting Inga-Britt Ahlenius, Under-Secretary for Internal Oversight Services).

203. Debbie Schlusel, *Muslim UN Peacekeepers Committed Rape, Dodge Discipline*, DEBBIE SCHLUSSEL BLOG (Mar. 22, 2010, 5:19 PM), <http://www.debbieschlusel.com/19511/muslim-un-peacekeepers-committed-rape-dodge-discipline/> (quoting Alain Le Roy, U.N. Under-Secretary-General for Peacekeeping Operations).

204. FRANCINE J. D’AMICO, PROMISES TO KEEP: WOMEN WORKERS AT THE UNITED NATIONS 1 (2008).

205. Comm. on the Elimination of Discrimination against Women, Contributions of the Comm. to Int’l Conferences: Rep. of the Comm. on Progress Achieved in the Implementation of the Convention, Nov. 14, 1994, ¶ 8, U.N. Doc. CEDAW/C/1995/7 (citing “Open Letter to the Women of the World,” read by Eleanor Roosevelt at the first session of the General Assembly on February 12, 1946).

206. *Id.*

207. *Id.*

Article 8 of the U.N. Charter provides that the U.N. “shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.”<sup>208</sup> Although the under-representation of women in professional levels posts at the United Nations was documented for the Commission on the Status of Women in 1950, it was not until twenty years later that the General Assembly adopted its first resolution on employment of women at the U.N.<sup>209</sup> It requested the Secretary General to include data on women in his annual report and urged that appropriate measures be undertaken to ensure equal opportunity for women.<sup>210</sup> The under-representation of women in the Secretariat has been continuously on the agenda of the General Assembly since this time.<sup>211</sup>

In 1974, a goal was set to achieve an equitable balance of staff members by 1980, and targets were established in an attempt to achieve such balance; they were subsequently revised continuously, as the target was not met.<sup>212</sup>

The representation of women in the U.N. was on the agenda of each of the World Conferences on Women.<sup>213</sup> The Nairobi Conference of the U.N. Decade for women recommended that “the United Nations system should take all necessary measures to achieve an equitable balance between women and men staff members at managerial and professional levels in all substantive areas, as well as in field posts.”<sup>214</sup>

In 1992, a target for policy level positions to be as close to fifty percent as possible by 1995 was adopted; however, this goal still has not been met.<sup>215</sup> In 1993, the Vienna Declaration and Programme of Action recognized the paucity of women in decision-making posts and urged the U.N. Secretariat to appoint and promote women staff members in accordance with the mandate of equality in the Charter of the United Nations.<sup>216</sup>

208. U.N. Charter art. 8.

209. Dina Francesca Haynes, *Ethics of International Civil Service: A Reflection on How the Care of United Nations' Staff Impacts the Ability to Fulfill Their Role in "Harmonizing" the World*, 30 *HAMLIN J. PUB. L. & POL'Y* 175, 190-91 (2008).

210. *Id.*

211. *Id.* at 190-92, 196.

212. U.N. Secretary-General, *Equality of Men and Women in the Secretariat*, ¶¶ 10, 15, 16, 176, U.N. Doc. ST/SGB/154 (Mar. 8, 1977).

213. *Historic Overview on the World Conferences on Women*, U.N., [http://www.un-ngls.org/spip.php?page=article\\_s&id\\_article=1725](http://www.un-ngls.org/spip.php?page=article_s&id_article=1725) (last visited Jan. 31, 2011).

214. World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, *Nairobi Forward-looking Strategies for the Advancement of Women*, ¶ 356, U.N. Doc. A/CONF.116/28/Rev (July 26, 1985).

215. G.A. Res. 48/106, at 2, U.N. Doc. A/RES/48/106 (Feb. 23, 1994); *SG Calls for Urgent Action to Achieve Gender Parity at UN*, UN NEWS CTR., 1 (Nov. 24, 2008), <http://www.un.org/womenwatch/osagi/pdf/Secretary%20General%27s%20message%20on%20seek.pdf>.

216. *Vienna Declaration*, *supra* note 47, ¶ 43.

In a report prepared in 1994 for the Ford Foundation entitled *Renewing the United Nations System*, Erskin Childers and Brian Urquhart, in commenting on the under representation of women at the U.N., noted that, although the United Nations has been a leader in standard-setting on gender issues, its Secretariat “is in standing violation of the Charter in abjectly failing to meet these standards.”<sup>217</sup>

Secretary General Ban Ki-moon has acknowledged that the pace of progress towards achieving gender parity in the United Nations system is slow and “called for redoubling of efforts to reverse the ‘regrettable trend.’”<sup>218</sup>

As of December 2004, women constituted only 36.9% of “staff in the Professional and higher categories with appointments of one year or more in the United Nations system.”<sup>219</sup> “During the 11-year period December 1997-December 2008 in the UN system, the overall growth of women in appointments of one year or more was 7.8%, an increase from 30.9% (5,716 out of 18,486) in 1997 to 38.7% (10,207 out of 26,316) in 2008.”<sup>220</sup> Gender parity within the U.N. system has fallen substantially short, particularly with respect to decision making positions.

Ban Ki-moon, in his statement to the General Assembly, stated that the entire system must adopt “new policies where none exist and more rigorously implement existing ones . . . . Efforts must be made to overcome the United Nations system’s informal organizational cultures which constrain the advancement of women staff.”<sup>221</sup>

It has been reported by U.N. bodies that impediments to achieving parity fall into seven broad categories, namely: inadequate accountability, monitoring and enforcement mechanisms; the lack of special measures to achieve gender balance; the absence of a focal point system; limited flexible work arrangements; lack of outreach in recruitment; low numbers of qualified women applicants; and lack of adequate data on the causes of high attrition rates for women.<sup>222</sup>

In addition, women are not promoted proportionately to men because of U.N. Personnel Policies.<sup>223</sup> A man, for example, might accept long absences from his family as essential for his career, but the

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217. ERSKINE CHILDERS & BRIAN URQUHART, *RENEWING THE UNITED NATIONS SYSTEM* 168 (1994).

218. *SG Calls for Urgent Action to Achieve Gender Parity at UN*, *supra* note 215.

219. U.N. Secretary-General, *Improvement of the Status of Women in the United Nations System: Rep. of the Secretary-General*, at 9, U.N. Doc. A/63/364 (Sept. 18, 2008) [hereinafter U.N. Doc. A/63/364].

220. *Id.* at 1.

221. *Id.* at 46.

222. *Id.* at 14.

223. Stecklow & Lauria, *supra* note 168, at A1.

working mother would likely face criticism from many sources if she chose to leave her family and ultimately qualify for a promotion.

Unless the member states and policy makers under the U.N. are committed to achieving parity within the U.N., women will continue to be underrepresented. Despite the attention paid to this issue for so many years, lack of representation of women remains a “regrettable trend.”<sup>224</sup>

### C. Sexual Harassment Within the U.N. System

An Op Ed piece in the New York Times notes:

In the middle of New York City, 7,000 employees work beyond the reach or protection of the law. They can be harassed, discriminated against or fired, and they have nowhere to turn. Their employer is not some sweatshop in Chinatown but the Secretariat of the United Nations. A particular group of employees has special cause for complaint: women.<sup>225</sup>

Almost from its inception, the United Nations has been the subject of complaints of sexual harassment involving high level U.N. personnel. The organization has been criticized for its handling of such cases both because of the arbitrary nature of the process and the length of time required to dispose of such claims.<sup>226</sup> Cases of sexual harassment within the U.N. can take years to adjudicate and complainants have no access to investigative reports.<sup>227</sup> In several cases, the contract of the complainant was not renewed or her position reclassified while the alleged harasser was allowed to retire or resign with full benefits.<sup>228</sup> This effectively put the harassers out of reach of the U.N. justice system despite the fact that the harassment had been substantiated by the internal investigation conducted by the internal investigation unit of the U.N. (OIOS).<sup>229</sup> One former U.N. attorney

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224. U.N. Doc. A/63/364, *supra* note 219, at 45.

225. Ciceil L. Gross, Op-Ed., *Catherine Claxton vs. the U.N.*, N.Y. TIMES, Sept. 15, 1994, at A23.

226. In addition, there are no statistics concerning the number of such cases which have been brought because each U.N. entity tracks cases separately and confidentially.

227. Stecklow, *supra* note 9.

228. *Id.*

229. In 2004, a French woman working as a legal officer in Gaza for the U.N. complained that a director of operations, to whom she reported, sexually harassed her. *Id.* A probe by the local U.N. agency in Gaza, which was led by the accused's friend, cleared the accused, but the complainant took her case to the U.N.'s main investigative unit, the Office of Internal Oversight Services (OIOS). *Id.* The accused reached his mandatory retirement age and left before the OIOS investigation was complete. *Id.* Meanwhile, the complainant's contract ran out and was not renewed. *Id.* By 2006, the OIOS had found some evidence of sexual harassment and concluded that it would have “recommended

commented, “[n]o matter which way the cases go, they mishandle it . . . .”<sup>230</sup>

U.N. personnel must pursue employment claims of discrimination or harassment within the internal justice system of the U.N. rather than through national systems because, under the U.N. Charter and the Convention on the Privileges and Immunities of the United Nations, the so-called “General Convention,”<sup>231</sup> the U.N. and its officials enjoy immunity from prosecution in state courts.<sup>232</sup> Thus, staff members must rely on the U.N. regulations rather than national courts. While an informal resolution of disputes is encouraged, the system has been criticized as non-transparent, confusing and inefficient.<sup>233</sup>

The mishandling of sexual harassment cases is illustrated by two widely reported cases. The first was the ground-breaking case brought by Catherine Claxton who claimed that she had been sexually harassed by an Assistant Secretary General in 1988.<sup>234</sup> A report issued by the U.N. Discrimination and Grievance panel and another by an outside Irish judge appointed by the Secretary General to hold a closed inquiry concluded that harassment and retaliation had occurred.<sup>235</sup> The Secretary General refused to release the report of the outside judge because it was not in “the best interests of the organization” and threatened Claxton with disciplinary action if she released the report.<sup>236</sup> The harasser received a generous retirement package and payment of his legal fees.<sup>237</sup> Claxton’s suit in New York state court was dismissed because the U.N. intervened on behalf of its former employee and claimed diplomatic immunity.<sup>238</sup> The U.N. ultimately

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counseling” if the accused was still with the organization; however, as he had already retired, nothing could be done. *Id.* The complainant pressed on, though, taking her plea for an equivalent job and compensatory pay to U.N. Secretary-General Ban Ki-moon, who rejected the appeal and sent it back for review to the local agency in Gaza that had initially dismissed the case. *Id.*; see also Masum Momaya, *Do Sexual Assailants in the United Nations System Enjoy Impunity?*, ASS’N FOR WOMEN’S RIGHTS IN DEV. (July 8, 2009), <http://www.awid.org/eng/Issues-and-Analysis/Library/Do-sexual-assailants-in-the-United-Nations-system-enjoy-impunity> (describing the incident).

230. Stecklow, *supra* note 9 (quoting George G. Irving) Mr. Irving was “a former U.N. attorney who now represents clients on both sides of such cases.” *Id.*

231. Privileges and Immunities of the United Nations, G.A. Res. 22 (I) A, U.N. Doc. A/RES/22 (Feb. 13, 1946).

232. *Id.* art. 4.

233. JULIA HUTTER, *PRE-LITIGATION PROCEDURES TO SETTLE EMPLOYMENT DISPUTES IN INTERNATIONAL ORGANIZATIONS: A CASE STUDY OF THE UNITED NATIONS SYSTEM 17-18* (2007).

234. Gross, *supra* note 225, at A23.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

reached a settlement and agreed to pay more than \$200,000.<sup>239</sup> This case is emblematic of numerous other cases where sexual harassment was substantiated, but the individuals were not disciplined because, during the course of the proceedings, they retired or resigned from the U.N.<sup>240</sup>

In a more recent case, two female employees charged the former U.N. High Commissioner for Refugees, Ruud Lubbers, who was also the former Prime Minister of the Netherlands, with sexual harassment that allegedly occurred during a 2003 meeting in Geneva.<sup>241</sup> The internal investigating unit of the U.N., OIOS, confirmed that sexual harassment had occurred and that the Chief had “a pattern of sexual harassment”<sup>242</sup> against female employees and had “engage[d] in serious acts of misconduct . . . of a sexual nature,”<sup>243</sup> and recommended that he be disciplined.<sup>244</sup> The then-Secretary General Kofi Annan disregarded the findings on the ground they “could not be substantiated.”<sup>245</sup> Lubbers resigned, but the complainants faced retaliation, including threats of job loss.<sup>246</sup> The women then sued in the United States District Court for the Southern District of New York alleging sex discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964.<sup>247</sup> The United Nations claimed diplomatic immunity and was supported in its claim of immunity by the U.S. Attorney’s Office.<sup>248</sup> The suit was dismissed on those grounds.<sup>249</sup> The ruling was upheld by the Circuit Court of Appeals,<sup>250</sup> and the claimants were denied a writ of certiorari to the Supreme Court.<sup>251</sup> In interesting dicta, the Circuit Court seems to open the door for a tort action, based on a battery claim of sexual harassment if the state system allowed such a claim.<sup>252</sup> The state

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239. *UN History Made with \$210,800 Settlement*, 3 HUM. RTS. TRIB. 21 (1995); *U.N. Will Pay \$94,000 to Settle Complex Sex Harassment Case*, L.A. TIMES, Dec. 24, 1994, [http://articles.latimes.com/1994-12-24/news/mn-12562\\_1\\_sexual-harassment-cases](http://articles.latimes.com/1994-12-24/news/mn-12562_1_sexual-harassment-cases).

240. Momaya, *supra* note 229; Shelley Walden, *United Nations Sexual Assault/Harassment Reports on Wikileaks*, ALL THINGS WHISTLEBLOWER: A GAP BLOG (Feb. 25, 2009, 9:42 AM), [http://whistleblower.typepad.com/all\\_things\\_whistleblower-/2009/02/united-nations-sexual-assault-harassment-reports-on-wikileaks.html](http://whistleblower.typepad.com/all_things_whistleblower-/2009/02/united-nations-sexual-assault-harassment-reports-on-wikileaks.html).

241. *Brzak v. United Nations*, 597 F.3d 107 (2d Cir.), *cert. denied*, 131 S. Ct. 151 (2010).

242. Petition for Writ of Certiorari, *Brzak v. United Nations*, 597 F.3d 107 (2d Cir. 2010) (No. 08-2799), ¶ 2.

243. *Id.* ¶ 60.

244. *Id.* ¶ 64.

245. *U.N. Employee’s Sexual Harassment Suit Tossed*, MSNBC.COM, May 1, 2008, <http://www.msnbc.msn.com/id/24408051/wid/1/>.

246. *Id.*

247. *Brzak*, 597 F.3d at 110.

248. *Id.*

249. *Brzak v. United Nations*, 551 F. Supp. 2d 313, 320 (S.D.N.Y. 2008).

250. *Brzak*, 597 F.3d at 114.

251. Petition for Writ of Certiorari, *supra* note 242, at 114.

252. *Brzak*, 597 F.3d at 114.

court would thus be required to adjudicate the defendant's claim of immunity.<sup>253</sup>

In 2005, the General Assembly, partly in response to the criticism of cases of sexual harassment, urged the Secretary General to convene a panel of experts to prepare "a model for a new system for resolving staff grievances in the United Nations that is independent, transparent, effective, efficient and adequately resourced and that ensures managerial accountability."<sup>254</sup> The experts confirmed that "[t]he system of administration of justice as it currently stands is extremely slow, underresourced, inefficient and, thus, ultimately ineffective."<sup>255</sup>

Further, the dispute proceedings themselves "generally lack[] transparency and fail[] to satisfy minimum requirements of the rule of law,"<sup>256</sup> such as guaranteeing "the right to a competent, independent and impartial tribunal in the determination of a person's rights, the right to appeal and the right to legal representation."<sup>257</sup> The report further stated, "the standards of justice that are now generally recognized internationally and that the Organization pursues in its programmatic activities are not met within the Secretariat or the funds and programmes themselves."<sup>258</sup>

In April 2007, the General Assembly formally adopted many of the recommendations set forth in the report.<sup>259</sup> Among the changes is a mandatory course on sexual harassment for U.N. staff and a redesign of the investigation procedures, which had been severely criticized previously.<sup>260</sup>

During the first year of the new system, 200 judgments had been rendered and the Appeals Tribunal reviewed more than 60 judgments.<sup>261</sup> Patricia O'Brien, Under-Secretary-General for Legal

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253. *Id.*

254. Administration of Justice at the United Nations, G.A. 59/283, ¶ 49, U.N. Doc. A/RES/59/283 (June 2, 2005).

255. Rep. of the Redesign Panel on the United Nations System of Administration of Justice, 61st Sess., Feb. 1, 2006, ¶ 5, U.N. Doc. A/61/205 (July 28, 2006) [hereinafter Redesign Panel].

256. *Id.* ¶ 73.

257. *Id.* ¶ 9. Both the United Nations Dispute Tribunal (UNDT) and the United Nations Administrative Tribunal (UNAT) are staffed by three full-time judges working in Geneva, New York and Nairobi. These tribunals have, in effect, subpoena power, the power to compel appearances and may issue temporary relief. Judgments are final and must be based on a recent opinion, stating both the facts and the law on which the judgment is heard.

258. *Id.*

259. G.A. Res. 61/261, ¶¶ 1, 10, U.N. Doc. A/RES/61/261 (April 30, 2007).

260. *See, e.g.*, U.N. Secretariat, *Prevention of Workplace Harassment, Sexual Harassment and Abuse of Authority*, at 1, U.N. Doc. ST/SGB/2005/20 (Nov. 28, 2005) (announcing the introduction of a learning program to aid in the facilitation of the zero tolerance policy regarding all types of harassment).

261. Press Release, Security Council, Security Council Calls for Peaceful Settlement

Affairs, characterized “[t]he new system as a milestone in strengthening the Organization’s commitment to the rule of law, justice and accountability.”<sup>262</sup>

Nevertheless the new system has been criticized. It fails to provide staff members with professional legal counsel, but instead relies on volunteers. The thousands of staff who are non-permanent cannot utilize the system and the jurisdiction of the tribunals is narrowly drawn. U.N. Secretary-General Ban Ki-moon stated, with reference to sexual harassment, “[t]his scourge remains a high priority issue for me.”<sup>263</sup>

It is still too early to assess the effectiveness of the new procedures. The pending cases and prior record of non-action, impunity, absence of disciplinary action for the harassers but punishment for the complainant, are not promising. The U.N. routinely waives immunity in criminal matters, and it claimed immunity to quash civil cases alleging sexual harassment despite the fact that action in a state court might provide the only available redress.<sup>264</sup> It should review its policy of immunity with respect to sexual harassment.

Further, an evaluation of OIOS, conducted in 2007, recommended that the U.N.’s procedures be revamped and made more professional.<sup>265</sup> It further advocated a more proactive approach to the issue of sexual harassment and recommended the creation of a Sexual Exploitation and Abuse Task Force to respond “to this highly visible and urgent area of misconduct.”<sup>266</sup> U.N. Security General Ban Ki-moon acknowledged that the system is defective and stated: “I fully share your concerns regarding sexual harassment and sex discrimination.”<sup>267</sup> Nevertheless, the U.N. continues to be the subject of investigative reports from the media.<sup>268</sup> Meaningful reform is still lacking and once again words remain to be translated into action.

## CONCLUSION

On balance, how do we assess the achievements of the United Nations with respect to women?

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of Disputes, Pledging ‘Forceful’ Fight against Impunity, in Statement Capping Day-Long Debate on Rule of Law, U.N. Press Release SC/9965 (June 29, 2010).

262. *Id.*

263. Stecklow, *supra* note 9.

264. Momaya, *supra* note 229.

265. MICHEL GIRODO, A CULTURE REVIEW OF THE INVESTIGATIONS DIVISION OF OIOS 36-37 (July 13, 2007).

266. *Id.* at 44.

267. Stecklow, *supra* note 9.

268. *See id.* (analyzing the sexual harassment reports and stating that sexual harassment cases within the U.N. is a slow process and that many managers have diplomatic immunity from both criminal and civil punishment).

Progress has been made in the past decades in the recognition that women's rights "are an inalienable, integral and indivisible part of universal human rights."<sup>269</sup> The development of International Criminal Law and the creation of International Criminal Tribunals now address gender-based crimes so that there no longer is impunity. The promulgation of treaties, both general human rights treaties, such as the ICCPR, that provide for equality and nondiscrimination, and women-specific conventions like CEDAW have had a major impact on the development of rights around the world. However, the numbers and scope of reservations to CEDAW greatly reduces its effectiveness and those incompatible with the object and purpose of CEDAW should not be allowed.<sup>270</sup>

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted in 2000, addresses trafficking in a comprehensive way.<sup>271</sup> Trafficking is a growing menace that overwhelmingly impacts women. U.N. Security Council recommendations focus on violence against women, particularly in times of conflict.<sup>272</sup> General Assembly declarations on violence against women, the appointment of a Special Rapporteur on violence against women and the new initiatives such as UNiTE, focus attention on grave human rights violations. Violence against women takes many forms and affects up to seventy percent of women in their lifetime.<sup>273</sup> Enforcement and implementation of such programs and initiatives must be strengthened and resources allocated in the decade ahead. Although gender specific violations of human rights, such as domestic violence and dowry burning, had been ignored or marginalized by the U.N. Human Rights Committees and the major human rights organizations,<sup>274</sup> more recent efforts to mainstream these issues are having an effect.

Gender related abuses attributed to U.N. Personnel including U.N. Peacekeepers have been the subject of many U.N. reports and reports from international NGOs.<sup>275</sup> Allegations of sexual abuse continue

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269. *Vienna Declaration*, *supra* note 47, ¶ 18.

270. *UN: CEDAW Weakened by Slew of Reservations*, WOMEN LIVING UNDER MUSLIM LAWS, Mar. 22, 2010, <http://www.wluml.org/node/6063>.

271. G.A. Res. 55/25 (II), at pmb., U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

272. *Violence against Women: Work of the Security Council on Violence against Women*, UNITED NATIONS, <http://www.un.org/womenwatch/daw/vaw/v-sc-work.htm> (last visited Jan. 31, 2011).

273. *Violence Against Women: The Situation*, *supra* note 111.

274. HUMAN RIGHTS WATCH, GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS 18-19 (1995).

275. *Cf. Protection from Sexual Exploitation and Abuse By U.N. and Related Personnel*, UNITED NATIONS, <http://www.un.org/en/pseataaskforce/tools.shtml> (last visited Jan. 31, 2011) (citing related reports from both the U.N. and NGOs concerning gender related sexual abuse committed by peacekeepers).

and indeed have escalated. While the situations with respect to certain personnel and experts on mission have been dealt with, discipline of military personnel is uneven and needs to be addressed.

Despite numerous General Assembly resolutions, reports and statements of support from successive Secretary Generals, women have yet to be adequately represented in professional posts within the U.N. Certainly, the appointment and retention of women in high level positions at the United Nations would be a positive development and might well lead to a change in the culture at the U.N. This will require a reexamination of accepted philosophy, policy, and political will on the part of the U.N. Secretariat, and national governments.

On July 2, 2010, the General Assembly unanimously approved the establishment of a single U.N. entity to promote equality for women.<sup>276</sup> The resolution adopted by consensus by the 192 member states will put four existing U.N. bodies dealing with the advancement of women under a single umbrella agency entitled, United Nations Entity for Gender Equity and the Empowerment of Women<sup>277</sup> or, as christened by the U.N. Resolution, UN Women.<sup>278</sup> The Resolution will consolidate the Secretary-General's Office of the Special Adviser on Gender Issues and the Advancement of Women, the U.N. Development Fund for Women (UNIFEM), the Division for the Advancement of Women, and the U.N. International Research and Training Institute for the Advancement of Women.<sup>279</sup>

“This is truly a watershed day,” Secretary-General Ban Ki-moon said. He continued:

By bringing together four parts of the UN system dedicated to women's issues, Member States have created a much stronger voice for women and for gender equality at the global level . . . It will now be much more difficult for the world to ignore the challenges facing women and girls—or to fail to take the necessary action . . . .<sup>280</sup>

“The new organization . . . will be headed by an under-secretary-general who will report directly to the Secretary-General.”<sup>281</sup> The

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276. *In Historic Move, UN Creates Single Entity to Promote Women's Empowerment*, U.N. NEWS CTR. (July 2, 2010), <http://www.un.org/apps/news/story.asp?NewsID=35224&Cr=gender&Cr1>.

277. *Id.*

278. G.A. Res. 64/L.56, ¶ 49, U.N. Doc. A/64/L.56 (June 30, 2010).

279. *Id.* ¶ 84.

280. *In Historic Move, UN Creates Single Entity to Promote Women's Empowerment*, *supra* note 276.

281. *United Nations: A Super Agency for Women Only?*, 12 N.Y.L. SCH. INT'L REV. 56, 57 (2010); *see also* Neil MacFarquhar, *A U.N. Agency for Women? Yes! But those Names . . .*,

position of under-secretary-general is the third highest rank in the U.N. system, and outranks the positions held by the present chiefs of the four existing women's agencies.

For many years, the United Nations has been hampered in its mission in promoting equality for women around the world because of the lack of funding, the marginalization by U.N. bodies of issues that impact women, the lack of political will on the part of member states and policy makers within the U.N., and the absence of a high-level advocate to advance equality. Creation of the so-called "super-agency" culminates a four-year campaign to streamline the U.N.'s activities promoting the status of women that was strongly supported by women's organizations and other non-governmental groups.<sup>282</sup> Although the world's governments agreed in 1995 to an ambitious platform to achieve equality for women, in the Beijing Declaration and Programme of Action, disparities continue in all aspects of society.<sup>283</sup> One U.N. spokesperson acknowledged that, "[w]omen in all parts of the world suffer violence and discrimination, and are under-represented in decision-making processes. High rates of maternal mortality continue to be a cause for global shame."<sup>284</sup>

The platform to achieve women's equality adopted at the 1995 U.N. women's conference in Beijing will be the framework for the new body's work.<sup>285</sup> The Declaration "called for governments to end discrimination against women and close the gender gap in 12 critical areas including health, education, employment, political participation and human rights."<sup>286</sup>

The mission of the new agency is to address policy issues, provide assistance to U.N. member states that seek it, and promote and monitor the U.N. system's actions to promote the advancement of women.<sup>287</sup>

With this new milestone achieved, perhaps the next is the appointment of a woman to the highest post at the U.N. that of

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N.Y. TIMES, July 2, 2010, <http://www.nytimes.com/2010/07/03/world/03nations.html> ("[T]he French managed to get the official translation included in a footnote: ONU Femmes. Now they are pushing for that name to be used over the English version.").

282. MacFarquhar, *supra* note 281. However, some member states were less than enthusiastic that scarce U.N. resources would be allocated to the creation of a new agency, or indeed to the idea that women needed their own U.N. organization. *Id.*

283. Press Release, UNIFEM, UN Creates New Structure for Empowerment of Women, U.N. Press Release (July 2, 2010), available at [http://www.unwomen.org/wpcontent/uploads/2010/07/UNWomen\\_PressRelease\\_201007021.pdf](http://www.unwomen.org/wpcontent/uploads/2010/07/UNWomen_PressRelease_201007021.pdf).

284. *Id.*

285. Edith M. Lederer, *UN Approves New Body to Promote Women's Equality*, USA TODAY, July 2, 2010, [http://www.usatoday.com/news/world/2010-07-02-un-womens-equality\\_N.htm](http://www.usatoday.com/news/world/2010-07-02-un-womens-equality_N.htm).

286. *Id.*

287. *Id.*

Secretary General. While traditionally the post of Secretary-General rotates so that each geographic region has a turn,<sup>288</sup> gender is not considered in the rotation and there has never been a female Secretary-General. Yet, there are many qualified women from all regions of the world who might serve as Secretary-General. The time is ripe and the efforts should start now. Certainly, a woman at the head of the U.N. would send a powerful message and might contribute to a change in the culture of that body. Although much has been achieved, much remains to be done.

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288. *UN Secretary-General*, UN ELECTIONS.ORG, <http://www.unelections.org/?=node/71> (last visited Jan. 31, 2011).