
Introduction

This book examines the regulation of sex between international personnel and local people in United Nations (UN) peace operations. Over the past two decades there has been a series of scandals implicating UN peacekeepers, humanitarian workers and private military contractors in sexual exploitation and abuse of local people. Perhaps the best known of these are the cases of Cambodia and Somalia in the early 1990s, Liberia and Sierra Leone in 2002 and the Democratic Republic of the Congo (DRC) in 2004. The cases in Cambodia, Somalia and the DRC all involved primarily military members of UN peacekeeping forces; while those in Liberia and Sierra Leone implicated humanitarian workers working for non-governmental organisations (NGOs) and international organisations employed in refugee camps. Liberia and Sierra Leone form the subject of the case study in Chapter 5, and UN peacekeepers in the DRC the subject of Chapter 6. Although less widely reported, there are also non-exploitative sexual relations between peacekeepers and local people. The response to sex in peace operations has shifted over the last twenty years from an attitude that ‘boys will be boys’ to a ‘zero tolerance’ policy. The zero tolerance policy, which appears to have been developed as a substitute for an effective legal framework, is itself highly problematic. This book argues that the regulatory focus should be on preventing, and ending impunity for, sexual crimes committed by international personnel against local people, rather than trying to prevent nearly all sex between international personnel and local people, as the zero tolerance policy claims to do. It will suggest more responsive approaches to sex in peace operations that aim to promote the sexual autonomy of local people, particularly women and girls.

Changes in the nature of peacekeeping are partly responsible for increased contact between international personnel and local people. While traditional peacekeeping involved a small number of observers supervising ceasefires, modern peace operations increasingly aim to stop fighting between warring groups and to reconstruct post-conflict

societies to prevent a return to conflict. Such peace operations usually require the deployment of large numbers of foreign, predominantly male, soldiers, as well as civilians, private military contractors and humanitarian workers, all of whom are well paid compared to the local population. The lack of functioning police, judicial and prison systems, along with immunities from prosecution granted to some international personnel, mean that those who perpetrate sexual crimes against local people go largely unpunished.

1.1 DynCorp private military contractors in Bosnia

The example of DynCorp in Bosnia illustrates the problems with regulating sex in peace operations. DynCorp is a large private military and security company (PMSC) which was contracted by the United States (US) government to provide police trainers and advisers to the UN mission in Bosnia in the late 1990s. Despite the company's role in policing and training police, some employees were implicated in trafficking women and girls from Russia, Moldova, Romania, Ukraine and other Eastern European countries to Bosnia. At the time it was estimated that international personnel accounted for 30–40 per cent of clientele and approximately 70 per cent of the revenue from human trafficking in Bosnia.¹ Media reports indicated that some DynCorp employees purchased trafficked women and children as well as benefiting from free sex in brothels. Evidence of involvement of some DynCorp employees came from two whistleblowers, Kathryn Bolkovac and Ben Johnston.

Kathryn Bolkovac was employed in April 1999 by DynCorp to work as a police monitor in Bosnia. An experienced police officer from Nebraska, she had particular expertise in child abuse and sexual assault cases.² Bolkovac became aware of widespread trafficking of women and girls into Bosnia by organised crime groups and that international personnel were also involved.³ According to local police, trafficking had not existed prior to the arrival of international peacekeepers.⁴ Bolkovac sent emails to around fifty recipients in the UN and DynCorp describing in graphic

¹ Sarah E. Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans* (Centre for Strategic and International Studies Press, 2005) 10.

² *Bolkovac v. DynCorp Aerospace Operations (UK) Ltd*, Employment Tribunals Case No. 3101729/01 (2002) para. 14.

³ *Ibid.* para. 26.

⁴ Richard Monk, former Commissioner, International Police, Bosnia Herzegovina, cited in 'Boys will be Boys', documentary film, reporter Sue Lloyd-Roberts, BBC, 2002.

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detail the abuses perpetrated against trafficked women and girls.⁵ She alleged that women and girls were smuggled into Bosnia ‘to work as dancers, waitresses, and prostitutes’, forced to perform sex acts on customers to pay debts and if they refused, they were ‘locked in rooms without food for days, beaten and gang raped by the bar owners and their associates’.⁶ She alleged that the clientele of these women included “some” local people, SFOR [NATO Stabilisation Force] and IPTF [International Police Task Force] personnel, local Police and international/humanitarian employees in Bosnia-Herzegovina’.⁷ Following the email, Bolkovac was redeployed to another area and in April 2001 she was dismissed.⁸ Bolkovac won her unfair dismissal case against the company, with the United Kingdom (UK) Employment Tribunal holding that DynCorp’s explanation was ‘completely unbelievable’ and that it had ‘no doubt whatever that the reason for her dismissal was that she made a protected disclosure’ under the UK legislation protecting whistleblowers.⁹ The Tribunal awarded Bolkovac £110,000 compensation for unfair dismissal.¹⁰ DynCorp lodged an appeal but withdrew it on 4 January 2002.¹¹ Bolkovac’s story has been made into a feature film titled ‘The Whistleblower’.¹²

Ben Johnston, a former US army aircraft mechanic employed by DynCorp in Bosnia, made internal complaints about company employees who boasted about ‘buying and selling women for their own personal enjoyment’ and about the ‘various ages and talents of the individual slaves they had purchased’.¹³ Johnston reported that at DynCorp ‘a lot of people said you can buy a woman and how good it is to have a sex slave at home’.¹⁴ DynCorp’s site supervisor at the US military Comanche Base, Bosnia, John Hirtz, videotaped himself having sex with two women, one of whom was clearly saying ‘no’. Hirtz later admitted to having raped one of the women.¹⁵ Kevin Werner, another DynCorp employee,

⁵ *Bolkovac v. DynCorp*, paras. 32–3.

⁶ Jamie Wilson, ‘£100,000 payout for sacked whistleblower’, *Guardian*, 27 November 2002, www.guardian.co.uk/uk/2002/nov/27/jamiewilson/print.

⁷ *Bolkovac v. DynCorp*, para. 34. ⁸ *Ibid.* para. 76. ⁹ *Ibid.* para. 98. ¹⁰ *Ibid.*

¹¹ Wilson, ‘£100,000 payout’.

¹² ‘The Whistleblower’, film, directed by Larysa Kondracki, Whistleblower (Gen One) Canada Inc. Barry Films co-production, Canada and Germany, 2010.

¹³ Kelly Patricia O’Meara, ‘DynCorp disgrace’, *Insight*, 14 January 2002.

¹⁴ Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution* (2001) 66, available at www.hrw.org.

¹⁵ *Ibid.* 64 n. 354.

admitted purchasing a weapon and a woman from a brothel owner and left Bosnia as a result of the weapons charge.¹⁶ Another DynCorp employee, Richard Ward, told Johnston that Ward could purchase a woman for him. 'He says he'll get me one for you—you can have one for 100 marks a night or buy them for two or three thousand marks. They can be yours, and they can be your "hoes"'.¹⁷ When DynCorp took no action on his complaints, Johnston approached the US Criminal Investigation Command, which substantiated some of his allegations.¹⁸ Johnston also alleged that the company 'turned a blind eye' to the involvement of DynCorp personnel in purchasing women and that their involvement in trafficking continued despite the army investigation.¹⁹ In June 2000, DynCorp fired Johnston 'for "misconduct, violation of standards and conditions of employment and employment agreement" by bringing "discredit to the Company and the U.S. Army while working in Tuzla, Bosnia and Herzegovina"'.²⁰ DynCorp was reluctant to fire the employees about whom Johnston had complained. The US State Department intervened to ensure that some employees were dismissed and repatriated.²¹ In August 2000, Johnston sued DynCorp in a federal district court in Texas.²² The case settled in August 2002, two days before it was due to go to trial and hours after Bolkovac won her case against the company in the UK.²³

Despite evidence from whistleblowers, corroborated by US Army investigations, no members of the international police task force were prosecuted for trafficking in Bosnia,²⁴ being repatriated

¹⁶ US Inspector-General, *Assessment of DOD Efforts to Combat Trafficking in Persons, Phase II, Bosnia-Herzegovina and Kosovo* (2003).

¹⁷ Deposition of Benjamin Dean Johnston, *Ben Johnston v. DynCorp Inc.*, District Court, Tarrant County, Texas, 20 March 2001, 50–2, cited in Human Rights Watch, *Hopes Betrayed*, 66.

¹⁸ Robert Capps, *Sex-Slave Whistle-Blowers Vindicated* (2002), available at <http://dir.salon.com/story/news/feature/2002/08/06/dyncorp/print.html>.

¹⁹ Human Rights Watch, *Hopes Betrayed*, 66. ²⁰ *Ibid.* 66.

²¹ US Department of State, *Information Memorandum: Trafficking in Women in Bosnia: Recent Events* (2002), available at www.hrw.org/legacy/reports/2002/bosnia/1201memo.pdf.

²² US Inspector-General, *Assessment of DOD Efforts*, 10.

²³ Capps, *Sex-Slave Whistle-Blowers*.

²⁴ Evidence of Martina Vandenberg, 'The U.N. and the sex slave trade in Bosnia: isolated case or larger problem in the U.N. system?', Hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations, House of Representatives, United States Congress (2002), available at http://commdocs.house.gov/committees/intlrel/hfa78948.000/hfa78948_0.htm.

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instead.²⁵ US Army investigators found they did not have jurisdiction over civilian contractors so they referred the case to Bosnian police.²⁶ Bosnian police were apparently unsure whether the contractors benefited from immunity under the Dayton Peace Accords so did not prosecute them.²⁷ At least thirteen DynCorp employees were repatriated from Bosnia, at least seven of whom were fired for ‘purchasing women, many of them underage, or participating in other sex trafficking activities’.²⁸ DynCorp nevertheless kept its contract with the US government to provide police to Bosnia.²⁹ An Inquiry by a Subcommittee of the US Congress heard evidence from a former UN official in Bosnia that:

an astonishing coverup attempt ... seemed to extend to the highest levels of the U.N. headquarters ... The Department of State purposefully distances itself from US IPTF members by hiring DynCorp as the middle man and makes no attempt to know anything about the activities of its IPTF officers who are serving as representatives and Ambassadors of the United States.³⁰

The case of DynCorp illustrates the risk of immunity under international law providing impunity in practice to those who commit sexual offences in peace operations. Further, the range of personnel involved in trafficking in Bosnia, including private military contractors working as UN police, diplomats, international humanitarian workers and local police, suggests the need to broaden the scope of categories of personnel who are regulated beyond a narrow focus on military peacekeepers or aid workers, considered separately.

Should all sex between international personnel and local people in peace operations be prohibited? Why are peacekeepers rarely prosecuted for crimes such as rape? Should humanitarian workers be allowed to pay

²⁵ Peter Andreas, ‘Symbiosis between Peace Operations and Illicit Business in Bosnia’ (2009) 16 *International Peacekeeping* 33, 42.

²⁶ Capps, *Sex-Slave Whistle-Blowers*. ²⁷ *Ibid*.

²⁸ ‘US defense contractor held responsible for sex trafficking in Bosnia’, *Feminist Daily News Wire*, 7 August 2002, available at www.feminist.org/news/newsbyte/printnews.asp?id+6769.

²⁹ O’Meara, ‘DynCorp disgrace.’

³⁰ Evidence of David Lamb, former UN Human Rights Investigator in Bosnia, ‘The U.N. and the sex slave trade in Bosnia: isolated case or larger problem in the U.N. system?’, Hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations, House of Representatives, United States Congress (2002), available at http://commdocs.house.gov/committees/intlrel/hfa78948.000/hfa78948_0.htm, 35.

for sex? Should local laws or international standards determine the age of consent to sex between local people and international personnel in peace operations? This book situates the problem of how to regulate sex between international personnel and local people in the context of peace operations that increasingly involve multiple actors in the absence of a functioning host country legal system.

1.2 Context and scope

This book focuses on international personnel deployed in peace operations. The term peace operations is broader than peacekeeping, and the personnel deployed include military peacekeepers seconded to the UN, civilian and UN police personnel. The book discusses private military contractors, who are individuals employed by PMSCs, and humanitarian workers, such as NGO workers and those working for international agencies, such as the UN refugee agency UNHCR and the UN children's fund UNICEF.³¹ Unlike other studies, which focus mainly on UN military peacekeepers, this book includes private and civilian personnel for a number of reasons. First, it recognises that:

[o]nce internationals step out of their organizationally branded SUVs and into the bars and clubs of the capital, it is extremely difficult, if not impossible, for locals (or other internationals) to distinguish between them on the basis of appearances or superficial contact.³²

This is despite the groups of actors discussed perceiving themselves to have quite distinct identities, objectives, constraints and ways of working. Another reason for discussing private military contractors and humanitarian NGO workers in addition to military peacekeepers is the UN's increasing practice of 'subcontracting'.³³ For example, UNHCR subcontracts the management of refugee camps to partner NGOs and the UN relies on PMSCs for a range of purposes.³⁴ The UN 'claims for itself the broad

³¹ Dianne Otto, 'Making sense of zero tolerance policies in peacekeeping sexual economies' in Vanessa Munro and Carl F. Stychin (eds.), *Sexuality and the Law: Feminist Engagements* (Routledge, 2007) 259, 267.

³² Kathleen M. Jennings, 'Protecting whom? Approaches to sexual exploitation and abuse in UN peacekeeping operations' in *Fafo Report* (2008: 36) 34.

³³ Edwin M. Smith and Thomas G. Weiss, 'UN task-sharing: toward or away from global governance?' in Thomas G. Weiss (ed.), *Beyond UN Subcontracting: Task-Sharing with Regional Security Arrangements and Service-Providing NGOs* (MacMillan, 1998) 227.

³⁴ Ralph Wilde, 'Quis Custodiet Ipsos Custodes? Why and How UNHCR Governance of Development Refugee Camps Should be Subject to International Human Rights Law'

task of regulating a wider array of actors that are now considered relevant to processes of peacekeeping and peacebuilding' as its humanitarian agencies rely on NGOs to implement their programmes.³⁵ Further, status, whether military or civilian, public or private, appears to be an important factor in determining whether or not international personnel are held accountable for sexual offences committed in the context of peace operations. Finally, comparing the different legal regimes and accountability mechanisms that apply to three categories of international personnel provides the opportunity to explore the different regulatory options available and the roles a range of non-state actors might play in regulating sex in peace operations.

Aspects of this discussion may also apply to UN, private military and NGO workers in development contexts. Indeed, some senior UN officials already take this approach, seeing sex involving individuals of sharply divergent power differentials as a broad social issue.³⁶ The 'emergency' aspects of peacekeeping and humanitarian environments, whereby lack of time, infrastructure and national governmental capacity can make provision of assistance a matter of life or death, reveal these power disparities even more starkly than in a development context.

This book does not consider sex between peacekeepers,³⁷ nor does it address peacekeeping conducted by regional bodies under Chapter VIII of the UN Charter,³⁸ as different regulatory regimes apply which cannot be considered in adequate detail here. The book does not deal with sexual offences committed by diplomats in conflict zones, who are subject to

(1998) 1 *Yale Human Rights and Development Law Journal* 107, 108; Chia Lehnardt, 'Peacekeeping' in Simon Chesterman and Angelina Fisher (eds.), *Private Security, Public Order: the Outsourcing of Public Services and its Limits* (Oxford University Press, 2009) 205, 207–9.

³⁵ Laura Zanotti, 'UN Integrated Peacekeeping Operations and NGOs: Reflections on Governmental Rationalities and Contestation in the Age of Risk' (2010) 17 *International Peacekeeping* 17, 23.

³⁶ Head of OHA Indonesia, Ignacio Leon; UN Resident Coordinator Libya, Brian Gleeson, ECHA/ECPS UN and NGO Task Force on Protection from Sexual Exploitation and Abuse, *Conversations with RC/HCs*, Best Practice Series (July 2008), available at www.un.org/en/pseatactaskforce/index.shtml.

³⁷ Secretary-General's *Bulletin on Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority*, UN Doc. ST/SGB/2008/5 (2008) para. 1.3.

³⁸ On regional peacekeeping, see Rosemary Durward, 'Security Council Authorization for Regional Peace Operations: a Critical Analysis' (2006) 13 *International Peacekeeping* 350; Hilaire McCoubrey and Justin Morris, *Regional Peacekeeping in the Post-Cold War Era* (Martinus Nijhoff, 2000).

prosecution or waiver of immunity by their sending states.³⁹ Similar issues of accountability arise regarding impunity of diplomats as arise regarding military peacekeepers when their sending states fail to prosecute them, but this book focuses on peace operations and the potential impunity of diplomats is not limited to countries hosting peace operations.

In this book the term ‘local people’ is used to mean people who reside in the state hosting the peace operation. Local people are not a homogenous group as they include internally displaced persons and refugees (i.e., people who have crossed an international border)⁴⁰ as well as ordinary residents. Even within citizens of the country hosting the peace operation, there are differences between local elites who form the government, and those who occupy less powerful positions by virtue of their ethnicity, gender, access to land, or regional location, for example. The UN refers to ‘beneficiaries of assistance’, a term used in relation to humanitarian assistance.⁴¹ It is possible that there are local people who remain unaffected by the conflict and hence they would not technically be beneficiaries of assistance, but I use it broadly ‘to cover the local population’ as the UN does when it has a mandate to serve the population at large.⁴² Who is included in ‘local people’ may change in different contexts, as it is the interaction with international actors that defines local people as local.

The term ‘zero tolerance’ of sexual exploitation and abuse is used differently in peace operations to its original usage, which derives from domestic policing approaches adopted in the US. In 1982, James Q. Wilson and George L. Kelling argued in their ‘broken windows’ essay that it was necessary to crack down strongly against apparently minor examples of disorderliness, such as broken windows, graffiti, loitering, public drinking and panhandling, in order to prevent more serious crime such as homicide, rape and robbery.⁴³ These ideas were adopted by

³⁹ Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961, in force 24 April 1964, 500 UNTS 95, Art. 31.

⁴⁰ Convention relating to the Status of Refugees, Geneva, 28 July 1951, in force 22 April 1954, 189 UNTS 150, Art. 1.

⁴¹ See, for example, Kirsti Lattu, *To Complain or Not to Complain: Still the Question* (HAP, 2008), subtitled ‘Consultations with humanitarian aid beneficiaries on their perceptions of efforts to prevent and respond to sexual exploitation and abuse’.

⁴² *Facilitator’s Guide: To Serve with Pride* DVD (2007) 4, available at www.un.org/en/pseataaskforce/tools.shtml.

⁴³ James Q. Wilson and George L. Kelling, ‘Broken Windows: the Police and Neighbourhood Safety’ (1982) *Atlantic Monthly* (March).

New York city mayor Rudolph Giuliani and police commissioner William Bratton in the 1990s and were credited with a sharp reduction in crime in New York city. However, many criminologists doubt whether the fall in crime was actually a result of the adoption of order maintenance and zero tolerance approaches or other factors, as other cities which did not adopt order maintenance policing also experienced a fall in crime rates.⁴⁴ Nevertheless, the message of zero tolerance has proved politically very successful, despite the fraught state of the empirical evidence supporting its effectiveness.

In peace operations, the zero tolerance policy appears designed to signal a break from the previous *laissez-faire* approach to sex between peacekeepers and local people. The UN approach to sex in peace operations has shifted radically over the past two decades. For example, in Cambodia in the early 1990s, the UN had no official policy but UN Secretary-General's Special Representative Yasushi Akashi's responded to NGO concerns about sexual misconduct by UN peacekeepers by saying 'boys will be boys'.⁴⁵ The official UN response to allegations of large-scale UN peacekeeper involvement in sexual assault, prostitution, trafficking, child prostitution and trafficking, and transmission of sexually transmitted infections in Cambodia was denial and minimisation.⁴⁶ In 1997, the UN adopted a 'gender mainstreaming' policy that also affected its policy and practice on peace operations.⁴⁷ Since then, public concern provoked by a series of sex scandals implicating UN peacekeepers led to the apparently strict policy of zero tolerance.

Discussion of sexual exploitation and abuse usually begins the story in 2002 with the West Africa aid for sex scandal that is the subject of Chapter 5. This discussion typically includes military peacekeepers and humanitarian NGO workers. However, my discussion begins earlier, in the late 1990s, with the case of private military contractors employed by DynCorp as part of the UN mission in Bosnia, for two reasons. First, there was much reference to, but seemingly little implementation of, a

⁴⁴ Bernard Harcourt, *Illusion of Order: the False Promise of Broken Windows Policing* (Harvard University Press, 2001) 92.

⁴⁵ Kien Serey Phal, 'The Lessons of the UNTAC Experience and the Ongoing Responsibilities of the International Community for Peacebuilding and Development in Cambodia' (1995) 7 *Pacific Review* 129, 132.

⁴⁶ Sandra Whitworth, *Men, Militarism, and UN Peacekeeping: a Gendered Analysis* (Lynne Rienner Pub., 2004) 67–71.

⁴⁷ Report of the Economic and Social Council for the Year 1997, UN Doc A/52/3/Rev.1 (1997) 24.

zero tolerance policy against trafficking in persons which appears to have pre-empted the UN and NGO adoption of such a policy in relation to sexual exploitation and abuse. In 2002, the US government adopted a “zero tolerance” policy regarding United States government employees and contractor personnel representing the United States abroad who engage in trafficking in persons⁴⁸ which appears to have been adopted by the UN in Bosnia. Second, our understanding of the phenomenon of sex in peace operations is incomplete if the role played by private military contractors remains unacknowledged, given their increasingly important presence. The zero tolerance policy on sexual exploitation and abuse was developed by NGOs and UN agencies in response to a West African ‘aid for sex’ scandal in 2002 in the *Inter-Agency Task Force Committee Report on Protection from Sexual Exploitation and Abuse in Humanitarian Crises*.⁴⁹ The six principles in that Report were adopted as UN policy by the Secretary-General in his *Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse* in 2003.⁵⁰

‘Sexual exploitation and abuse’ is commonly reduced by the UN and NGOs to the acronym SEA. The zero tolerance policy defines sexual exploitation as ‘any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another’. Sexual abuse is defined as the ‘actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions’.⁵¹ The zero tolerance policy on sexual exploitation and abuse was no doubt deliberately writ large to prohibit conduct such as trafficking or statutory rape which might not have domestic equivalents in either host or sending states. Given that prosecution of sexual crimes requires satisfying a difficult burden of proof, the loose definition of sexual exploitation and abuse could also help to shift the legal burden of defining sexual crimes from victims to alleged perpetrators. By packaging this behaviour into an acronym and

⁴⁸ US Government, *National Security Presidential Directive-22 Combating Trafficking in Persons* (2002), available at www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf.

⁴⁹ IASC, *Report of the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises* (2002), available at www.unicef.org/emerg/files/IASCTFReport.pdf.

⁵⁰ Secretary-General’s *Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse*, UN Doc. ST/SGB/2003/13 (2003).

⁵¹ *Ibid.* para. 1.