

SEX IN PEACE OPERATIONS

Gabrielle Simm's critical re-evaluation of sex between international personnel and local people examines the zero tolerance policy on sexual exploitation and abuse and its international legal framework. Whereas most preceding studies of the issue have focused exclusively on military peacekeepers, *Sex in Peace Operations* also covers the private military contractors and humanitarian NGO workers who play increasingly important roles in peace operations.

Informed by socio-legal studies, Simm uses three case studies (Bosnia, West Africa and the Democratic Republic of the Congo) to illustrate the extent of the problem and demonstrate that the problems of impunity for sexual crimes are not just a failure of political will but the result of the structural weaknesses of international law in addressing non-state actors. Combining the insights of feminist critique with a regulatory approach to international law, her conclusions will interest scholars of international law, peace and conflict studies, gender and sexuality and development.

GABRIELLE SIMM is a Senior Research Associate at the Faculty of Law, University of New South Wales. She has previously worked as a government lawyer advising on international law in the Australian Attorney-General's Department and the Department of Foreign Affairs and Trade, and as a diplomat in South-east Asia. She has also worked as a refugee lawyer in Melbourne.

SEX IN PEACE OPERATIONS

GABRIELLE SIMM



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
 978-1-107-03032-9 — Sex in Peace Operations
 Gabrielle Simm
 Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
 a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
 education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107030329

© Gabrielle Simm 2013

This publication is in copyright. Subject to statutory exception and to the provisions
 of relevant collective licensing agreements, no reproduction of any part may take
 place without the written permission of Cambridge University Press & Assessment.

First published 2013

First paperback edition 2015

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Simm, Gabrielle.

Sex in peace operations/Gabrielle Simm.

pages cm

Includes bibliographical references.

ISBN 978-1-107-03032-9 (Hardback)

1. United Nations–Peacekeeping forces. 2. Sex–Social aspects. 3. Peacekeeping
 forces–Moral and ethical aspects. 4. United Nations–Privileges and immunities.
5. International agencies–Rules and practice. 6. Liability (Law). 7. Sex and law.
8. Private military companies (International law). 9. Non-governmental organizations.
10. Humanitarian assistance. I. Title.

KZ6376.S56 2013

345'.0253–dc23

2012036510

ISBN 978-1-107-03032-9 Hardback

ISBN 978-1-107-53628-9 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence
 or accuracy of URLs for external or third-party internet websites referred to in this
 publication and does not guarantee that any content on such websites is, or will
 remain, accurate or appropriate.

CONTENTS

<i>Acknowledgments</i>	vii
<i>Table of cases</i>	viii
<i>Table of treaties and international instruments</i>	x
<i>List of abbreviations</i>	xii
1 Introduction	1
1.1 DynCorp private military contractors in Bosnia	2
1.2 Context and scope	6
1.3 Why sex in peace operations? Why regulation?	11
1.4 A feminist regulatory framework	16
1.5 Chapter outline	21
2 Regulating peacekeeping: a feminist framework	24
2.1 Introduction	24
2.2 Peacekeeping	25
2.3 Feminist engagements	33
2.4 Regulatory studies	40
2.5 Conclusion	52
3 Law as regulation: jurisdiction, immunity and international responsibility	54
3.1 Introduction	54
3.2 Jurisdiction	56
3.3 Responsibility of states and international organisations	64
3.4 Immunity	77
3.5 Conclusion	85
4 ‘Above the law’: sex trafficking by private military contractors in Bosnia	88
4.1 Introduction	88
4.2 DynCorp contractors trafficking women into forced prostitution in Bosnia	90

vi	CONTENTS
4.3	Regulating PMSCs 95
4.4	Trafficking in persons 109
4.5	Conclusion 116
5	Aid for sex: humanitarian NGO workers in West Africa 119
5.1	Introduction 119
5.2	The West African ‘aid for sex’ scandal 121
5.3	Regulating humanitarian NGOs 124
5.4	Transactional sex 139
5.5	Conclusion 146
6	‘Zero compliance with zero tolerance’: UN peacekeepers in the DRC 149
6.1	Introduction 149
6.2	The MONUC sex scandal 151
6.3	Regulating UN peacekeepers 158
6.4	Sexual abuse and sexual relationships 166
6.5	Conclusion 175
7	Conclusion 178
7.1	Introduction 178
7.2	Regulating sex in peace operations 179
7.3	The subjects of international law 184
7.4	Regulating international law 189
7.5	Sexing regulation 191
	<i>Bibliography</i> 195
	<i>Index</i> 222

ACKNOWLEDGMENTS

Thanks are due to many people who enabled me to complete this book, which began life as my doctoral thesis at the Australian National University. I have been particularly fortunate in having the guidance of an experienced and inspirational supervisor, Hilary Charlesworth. My work has benefited immensely from her intellectual rigour and her support in overcoming a number of setbacks. I thank the other members of my panel: John Braithwaite, for changing the way I think about law; and Bina D'Costa, for her insights and her enthusiasm. Hilary and John both advised me on transforming the thesis into a book and the Regulatory Institutions Network (RegNet) at the Australian National University provided a stimulating and supportive environment in which to undertake this research.

My doctoral thesis examiners, Nigel White and Tina Dolgopoul, provided very useful comments and I thank them for their careful attention to my work. I am grateful to Gerry Simpson, Dianne Otto, Nicola Lacey, Sarah Heathcote and Wayne Morgan for thought-provoking discussions. Thanks also to Jindy Pettman for her support and encouragement over many years and to Hans-Joerg Kraus for sharing his expertise with EndNote.

A previous version of Chapter 3 of this book appeared in 'International Law as a Regulatory Framework for Sexual Crimes Committed by Peacekeepers' (2011) 6 *Journal of Conflict and Security Law* 473. I gratefully acknowledge the journal's permission to reprint the relevant passages.

I thank friends and colleagues who provided comments and advice and my family for their support in enabling me to undertake this work over many years. Finally, I dedicate this work to Zaw Naing, Thuriya and Kaythari.

TABLE OF CASES

<i>Agim Behrami and Bekir Behrami v. France; Ruzdhi Saramati v. France, Germany and Norway</i> [2007] 45 ECHR 41	70, 71, 74, 115
<i>Al-Jedda v. United Kingdom</i> , App. No. 27021/08, 7 July 2011	71, 72, 74
<i>Al-Skeini and others v. United Kingdom</i> , App. No. 55721/07, 7 July 2011	65
<i>Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Advisory Opinion)</i> [1989] ICJ Rep. 177	83
<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)</i> [2007] ICJ Rep. 43	66, 72
<i>Aydin v. Turkey</i> [1997] ECHR Rep. 1997-VI (GC) Judgment (Merits and Just Satisfaction), 25 September 1997	164
<i>Barcelona Traction, Light and Power Co. Ltd (Belgium v. Spain)</i> (Merits) [1970] ICJ Rep. 3	57
<i>Beric v. Bosnia and Herzegovina</i> , App. No. 36357/04 (ECHR, 16 October 2007)	71
<i>Bolkavac v. DynCorp. Aerospace Operations (UK) Ltd</i> , Case No. 3101729/01, Employment Tribunals (2002)	2, 3, 4, 90, 118, 182
<i>Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)</i> [2005] ICJ Rep. 116	65, 66
<i>Case concerning the Arrest Warrant of 11 April 2000 (DRC v. Belgium)</i> [2002] ICJ Rep 3	57, 83
Case No. 265615/HA ZA 06–1671, Judgment of 10 September 2008, District Court of The Hague, the Netherlands	71
<i>Corfu Channel (UK v. Albania)</i> [1948] ICJ Rep. 4	65
<i>Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion)</i> [1999] ICJ Rep. 62	83
<i>Gajic v. Germany</i> , App. No. 31446/02 (ECHR, 28 August 2007)	71
<i>Hasan Nuhanović v. Netherlands</i> , Appeal Judgment LJN: BR5388, Court of Appeal, The Hague, 5 July 2011, also published as <i>Nuhanović v Netherlands</i> , Appeal Judgment LJN: BR5388; ILDC 1742 (NL 2011), 5 July 2011	72, 75
<i>Kasumaj v. Greece</i> , App. No. 6974/05 (ECHR, 5 July 2007)	71
<i>Kiobel v. Royal Dutch Petroleum</i> (US Supreme Court, docket 10–1491) decision expected in 2013	108

TABLE OF CASES	ix
<i>Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)</i> (Merits) [1986] ICJ Rep. 14	66
<i>Mothers of Srebrenica v. the Netherlands and the United Nations</i> , 10/04437, Supreme Court of the Netherlands, 13 April 2012	73
<i>Mothers of Srebrenica v. The Netherlands and the United Nations</i> , Appeal Judgment, LJN: BLN8979, Court of Appeal, The Hague, 30 March 2010	73
<i>Nordan v. Blackwater Security Consulting, LLC</i> , 382 F. Supp. 2d 801 (EDNC 2005)	107
<i>Prosecutor v. Akayesu</i> , ICTR-96-4, Trial Judgment, 1996	84, 163, 167, 168
<i>Prosecutor v. Furundžija</i> , IT-95-17/1, Trial Judgment, 1998	84, 163
<i>Prosecutor v. Kunarac</i> , IT-96-23 and IT-96-23/1, Appeals Chamber, 2002	84, 163
<i>Prosecutor v. Mucić et al. (Čelebići Camp)</i> , IT-96-21, Trial Judgment, 1998	167
<i>Prosecutor v. Tadić</i> , IT-94-1-A, Trial Judgment, 1999	66, 72
<i>R v. Bow Street Stipendiary Magistrate and others, ex parte Pinochet Ugarte</i> [1999] 2 All ER 97, UKHL 17	84
<i>R (on application of Al-Jedda) v. Secretary of State for Defence</i> [2007] UKHL 58	71, 72
<i>Raquel Martín de Mejía v. Peru</i> , Report No. 5/96, Case 10970, Annual Report of the InterAmerican Commission on Human Rights 1995, OEA/Ser.L/V/II.91, doc.7 rev, 28 February 1996	65
<i>Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)</i> [1949] ICJ Rep. 174	68, 77
<i>Waite and Kennedy v. Germany</i> , App. No. 26083/94, 1999-I ECHR 68 (1999)	78
<i>Xe Services Alien Tort Litigation, In re</i> , 665 F. Supp.2d 569 (ED Va. 2009)	107

TABLE OF TREATIES AND INTERNATIONAL
 INSTRUMENTS

Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, Washington, 19 June 1951, 199 UNTS 68	63
Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of their Activities during their Temporary Presence in Iraq, 17 November 2008, in force 1 January 2009	103
Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, in force 21 October 1950, 75 UNTS 135	159, 162
Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, in force 21 October 1950, 75 UNTS 287	159, 161
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, in force 26 June 1987, 1465 UNTS 85	164
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, New York, 2 December 1949, in force 25 July 1951, 96 UNTS 271	110
Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, in force 3 September 1981, 1249 UNTS 13	116, 164
Convention of the Organization of African Unity for the Elimination of Mercenaries in Africa, Libreville, 3 July 1977, in force 22 April 1985, OAU Doc. CM/433/Rev.L, Annex 1	97
Convention on the Privileges and Immunities of the Specialized Agencies, New York, 21 November 1947, in force 10 February 1949, 33 UNTS 261	128
Convention on the Privileges and Immunities of the United Nations, New York, 13 February 1946, in force 17 September 1947, 1 UNTS 15 and 90 UNTS 357	78–84, 89, 165
Convention on the Rights of the Child, New York, 15 November 1989, in force 19 November 2000, 1577 UNTS 3	126, 146, 164, 175
Convention relating to the Status of Refugees, Geneva, 28 July 1951, in force 22 April 1954, 189 UNTS 150	8, 125
Charter of the United Nations, San Francisco, 26 June 1945, in force 24 October 1945, 1 UNTS XVI	7, 27, 37, 64, 77–79, 85, 127

TABLE OF TREATIES	xi
European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, Strasbourg, 24 April 1986, in force 1 January 1991, CETS 24	126
Exchange of Letters constituting an Agreement relating to the settlement of claims filed against the United Nations in the Congo by Belgian nationals, 20 February 1965, in force 17 May 1965, UNTS 7780	75
General Framework Agreement for Peace in Bosnia and Herzegovina, Paris, signed and in force 14 December 1995 (Dayton Peace Accords) (1996) 35 ILM 75	5, 59, 81, 88–89, 93, 102, 181
Hague Convention II on the Laws and Customs of War on Land, The Hague, 29 July 1889, in force 4 September 1900, 32 Stat. 1803, TS 403	161
Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, The Hague, 2 October 1973, in force 1 August 1976, 1021 UNTS 209	77
International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, New York, 4 December 1989, in force 20 October 2001, 263 UNTS 75	96, 98
International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, in force 3 January 1976, 99 UNTS 171	125
ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Geneva, 17 June 1999, in force 19 November 2000, 2133 UNTS 161	164
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, New York, 6 October 1999, in force 22 December 2000, 2131 UNTS 83	116
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000, in force 18 January 2002, 2171 UNTS 227	164
Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Geneva, 8 June 1977, in force 7 December 1978, 1125 UNTS 3	161
Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, in force 7 December 1978, 1125 UNTS 609	161
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Palermo, 15 November 2000, in force 25 December 2003, 2237 UNTS 319	18, 110–112, 116
Rome Statute of the International Criminal Court, Rome, 17 July 1998, in force 1 July 2002, 2187 UNTS 90	51, 61, 62, 84, 127, 163, 168
UN Convention on Jurisdictional Immunities of States and their Property, 2 December 2004 (not yet in force), available at untreaty.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf	77
UN Convention Against Transnational Organised Crime, New York, 15 November 2000, in force 29 September 2003, 2225 UNTS 209	110
Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961, in force 24 April 1964, 500 UNTS 95	8, 78

ABBREVIATIONS

AIDS	acquired immune deficiency syndrome
ALNAP	Active Learning Network for Accountability and Performance in Humanitarian Action
BAPSC	British Association of Private Security Companies
BSO	Building Safer Organisations
DPKO	UN Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CROC	Convention on the Rights of the Child
ECHO	European Commission Humanitarian Aid and Civil Protection
ECOSOC	UN Economic and Social Council
HAP	Humanitarian Accountability Partnership
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	international humanitarian law
ILC	International Law Commission
IPTF	International Police Task Force
KFOR	(NATO) Kosovo Force
MEJA	Military Extraterritorial Jurisdiction Act
MONUC	UN Organization Mission in the DR Congo
MONUSCO	UN Organization Stabilization Mission in the DR Congo
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NGO	non-governmental organisation
NSPD	(US) National Security Presidential Directive
OIOS	(UN) Office of Internal Oversight Services
OSCE	Organisation for Security and Cooperation in Europe
PMSC	private military security company

LIST OF ABBREVIATIONS

xiii

SEA	sexual exploitation and abuse
SFOR	(NATO) Stabilisation Force (in Bosnia)
SOFA	Status of Forces Agreement
SRSG	Special Representative of the Secretary-General
STI	sexually transmitted infection
STOP	Special Trafficking Operations Program
TNC	transnational corporation
UN	United Nations
UNCITRAL	UN Commission on International Trade Law
UNHCR	(Office of) United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIK	United Nations Mission in Kosovo
UNTAC	United Nations Transitional Authority in Cambodia