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"Policing those who Police the Peace"

By Thaddeus Hoffmeister

WASHINGTON Few can disagree about the value and importance of United Nations personnel in war-torn countries. In the Democratic Republic of the Congo, for example, the UN peacekeeping mission, with 11,000 military personnel from over 50 countries and 1,000 civilian employees, is a critical stabilizing force.

But recent allegations of sexual abuses by UN peacekeepers have shaken this semblance of stability. Although the allegations involve only a small percentage of the peacekeepers, they are, unfortunately, not new. Similar accusations have been made in Burundi, Bosnia, Cambodia, East Timor, Ethiopia, Liberia, Kosovo and Sierra Leone.

Allowing peacekeepers to get away with criminal conduct compromises UN efforts and guarantees that such abuses will continue.

Alas, prosecuting the guilty is no easy task. First, locating those involved is in itself a herculean challenge. Peacekeepers are constantly rotated in and out of countries and their victims, many of whom are destitute, are often forced by conflict to live a nomadic existence among refugee camps and food distribution centers.

Second, a number of the allegations against the peacekeepers (150 to date in Congo) involve soliciting prostitutes, which, although prohibited by the UN Code, is generally not regarded as an offense that merits full investigation and prosecution. As for more serious charges, such as rape or pedophilia, the parties most interested in seeing justice done - the local residents - often do not have the means to pursue it. Even if they did, their efforts would be wasted: Peacekeepers can only be prosecuted by their home country.

Before sending a mission abroad, the United Nations negotiates a Status of Forces Agreement (SOFA) that, in almost all instances, deprives local authorities of criminal jurisdiction over peacekeepers. If there is no host-country government to negotiate with, as in East Timor or Kosovo, the countries providing peacekeepers and the UN determine the terms of the SOFA. Few if any countries would agree to send service members to countries like Congo if they could end up in local courts.

One potential solution could be the **International Criminal Court (ICC)** - a possibility greatly feared by the United States. Since the court's inception in 2002, the United States has regularly requested and received a formal waiver of jurisdiction for international peacekeepers. Not until this past summer, shortly after the abuses of Abu Ghraib were revealed, did the United States stop pursuing its annual peacekeeper waiver.

Even so, prosecution by the ICC is highly unlikely because its jurisdiction is limited by its charter to criminal acts "committed as part of a plan or policy or as part of a large-scale

commission of such crimes." That would probably not apply in sex-abuse crimes by peacekeepers. Their crimes are most likely random acts by undisciplined soldiers.

Ultimately, the answer must lie within the United Nations itself. In most cases, the UN has overall operational and financial control of a peacekeeping mission. While the countries that provide the troops maintain legal jurisdiction over their peacekeepers, it is the UN Force Commander who has the duty of maintaining "good order and discipline." And the UN is responsible for making sure that those peacekeepers accused of crimes are actually prosecuted back home.

This oversight role can be better accomplished by closer monitoring over these countries, and by levying of fines against governments which fail to prosecute their soldiers, or which repeatedly send untrained and undisciplined soldiers on UN missions. Finally, the UN can greatly improve the likelihood of prosecuting the guilty by ensuring that victims are properly cared for, and are made available to investigators.

Absent changes in the jurisdiction of the ICC, it is up to the UN to police its peacekeepers.

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